



Claim No: CR-2024-004856

Neutral Citation Number: [2026] EWHC 2528 (BP)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD) and BUSINESS LIST (ChD)

7 Rolls Buildings,
Fetter Lane, London,
EC4A 1NL

Date: 6 October 2026

Before:

THE HONOURABLE MR JUSTICE THOMPSELL

IN THE MATTER OF KOZA LTD.
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

TÜRK ALTIN İŞLETMELERİ A.Ş (previously
Koza Altin İŞLETMELERİ A.Ş

Petitioner

and

(1) KOZA LTD
(2) HAMDİ AKIN IPEK

Respondents

Mr James Sheehan KC, Ms Camille Boileau and Ms Eloise Hewson instructed by
MacGregor Law Ltd for the **2nd Respondent**
Mr David Caplan KC, and Mr Paul Fradley instructed by **Mishcon de Reya LLP** for the
Petitioner

Hearing dates: 16, 17 and 18 June 2026

JUDGMENT

Mr Justice Thompsell :**1. INTRODUCTION**

1. This judgment is dealing with two applications (the “**Applications**”) made by the Petitioner, Türk Altın İşletmeleri A.Ş. (previously known as Koza Altın İşletmeleri A.Ş (“**Türk Altın**”)). These are:
 - i) First, an application for summary judgment on (or alternatively strike out of the defence to) the petition it presented on 14 August 2024 for the winding up on the just and equitable ground (the “**Petition**”) of Koza Ltd (“**Koza Ltd**” or the “**Company**”). I will refer to this as the “**Second SJ Application**”.
 - ii) Secondly, an application for injunctions compelling compliance with certain special resolutions passed by Türk Altın (the “**Part 8 Claim**”), although this relief is not sought if the Second SJ Application is granted.
2. This judgment is dealing also with the application of the Second Respondent, Mr Hamdi Akin Ipek (“**Mr Ipek**”) for permission to serve on the Turk Altın out of the jurisdiction an unfair prejudice petition (the “**Service Out Application**”).
3. If this judgment looks familiar it is because on 10 September 2025 I handed down judgment (the “**First SJA Judgment**”) in relation to Türk Altın’s earlier application for summary judgment on (or alternatively strike out of the defence to) the Petition. The First SJA Judgment has the neutral citation number [2025] EWHC 2304. As almost all the factual background dealt with in the First SJA Judgment is of equal relevance to this judgment, and to avoid readers having to refer back to another judgment, I am reproducing this material in this judgment, updated by reference to more recent events.
4. Similarly, as much of the exposition of law referred to in the First SJA Judgment is relevant to this judgment (and I think was accepted as accurate by counsel on both sides) I am reproducing much of that exposition in this judgment but again supplementing this with further legal analysis arising out of the arguments before me in this hearing.
5. Türk Altın owns 100% of the ordinary shares of Koza Ltd (being the only shares that enjoy material economic rights). However, for over nine years now it has been shut out of control at the board level of the Company by Mr Ipek.
6. Mr Ipek is registered as the holder of the one remaining A ordinary share in Koza Ltd. Although named as being a species of ordinary share, this share affords him no material economic rights - no right to dividends and only a right to a distribution of capital of £1 on a winding up. However, the holder of the A ordinary share has rights to veto the removal of a director, block the appointment of any other director, and to block any resolution for the winding-up of the Company.
7. Türk Altın is reserving the right to challenge whether the A ordinary share was properly issued, but for the purposes of this hearing and the Petition it is common ground that I should proceed on the basis that it was properly issued.

8. Türk Altin and Mr Ipek have been locked in a battle over the control of Koza Ltd since 2016 that has so far generated 27 applications to court, 18 hearings in the High Court, 4 hearings in the Court of Appeal, and a trip to the Supreme Court.
9. Pending resolution, the court, through a series of interim injunctions, the content of which has changed over time and which the parties refer to as the “**Interim Regime**”, has imposed restrictions on Türk Altin’s purporting to pass any resolutions that would require the consent of the holder of the A ordinary share and strict limits on spending and the alienation of assets by the Company.
10. Türk Altin argues that, notwithstanding the Interim Regime, Mr Ipek has been causing the Company to spend its money at what it considers to be an alarming rate and has already caused the Company to spend the vast majority of its liquid assets.
11. In short, Türk Altin argues that there are irreconcilable differences between it (the economic owner of the Company) and Mr Ipek as the entrenched director of the Company; these appear to be set to continue; and it is just and equitable to wind up the Company so as to bring to an end an intolerable position whereby it considers that the Company is not being managed in the interests of its economic owner and it can do nothing about it other than petition for a winding up.
12. Mr Ipek argues that a winding up is not justified: what Türk Altin describes as an “intolerable position” is merely the way that the Company’s constitution operates; where there have been disputes these either have arisen from the Interim Regime (which will come to an end) or through Türk Altin passing resolutions that are unlawful and/or against the interests of the Company.
13. Mr Ipek argues further, that as an alternative to winding up he has offered and/or procured credible offers to purchase the shares held by Türk Altin or the assets of the Company and this has been unreasonably refused; that the winding-up is not being sought for a proper purpose. He argues further that in any case, a winding-up petition on the just and equitable grounds is not something that should be dealt with through a summary process but which should be undertaken on the basis of evidence tested properly through a full trial.

2. **BACKGROUND**

(a) Parties

14. Koza Ltd is an English company, incorporated in 2014 and capitalised with £60m from Türk Altin, which became (and remains) its 100% ordinary shareholder. At the time of its incorporation, Mr Ipek and members of his family were directors of, and controlled, Türk Altin.
15. Koza Ltd’s sole director is Mr Ipek. Mr Ipek, is a businessman of Turkish origin and was, until 26 October 2015, the chairman of Koza-Ipek Holdings AS, which was then the ultimate parent company of the private shares in the Koza group of companies (the “**Koza Group**”), of which Türk Altin formed a part. He now lives in the United Kingdom, and has not returned to Turkey since 2015, where there is a warrant for his arrest.

16. Türk Altın is a Turkish public company, incorporated in 1989. It is engaged in the business of gold mining, although none of its investments are in goldmines that are as yet operational. Around 30% of its shares are traded on the Istanbul Stock Exchange. Considering both direct and indirect shareholdings, as far as economic interests go, it is majority publicly owned. However, as far as control goes, it may be regarded as being controlled by organs of the Turkish state. The privately held shares in Türk Altın are all owned, directly or indirectly, by the Turkish Wealth Fund (the “TWF”).

(b) *The confiscation of shares in Türk Altın*

17. An important part of the background is that Türk Altın was originally a company created by and in the control of Mr Ipek or his family and family companies. It remained so controlled up until 26 October 2015. On this date a Turkish criminal judge appointed various individuals as “trustees” of various Koza Group companies including Türk Altın in the context of a criminal investigation based upon an alleged affiliation between Mr Ipek and an organisation that the Turkish state has ruled to be a terrorist organisation.
18. Mr Ipek challenged that decision before the Turkish Constitutional Court (the “TCC”) and made applications to the European Court of Human Rights (the “ECtHR”) in respect of it. Those challenges and applications were rejected: see *Koza Ltd v Koza Altın* [2022] EWCA Civ 1284 at [5]-[6].
19. On 1 September 2016 a statutory decree enabled the powers of “trustees”, such as those appointed to Türk Altın, to be transferred to another state-owned institution, Tasarruf Mevduatı Sigorta Fonu (the “TMSF”). The powers were subsequently so transferred, and the TMSF has subsequently exercised those powers, including by making its own appointments to the board of Türk Altın: see the same case at [17]-[18].
20. On 9 June 2017 an indictment was issued against Mr Ipek and others in Turkey. No charges have been established against Mr Ipek, but nor could they be, since he cannot be tried unless he is within the Turkish jurisdiction and he has been outside that jurisdiction since the charges were brought.
21. On 9 August 2017, the Government of Turkey issued a certified extradition request for Mr Ipek to stand trial for various crimes relating to his alleged involvement with the Gülenist movement, including in relation to funding and/or donations to legitimate charitable and educational institutions alleged to be connected to an armed terrorist organization. The alleged offences for which extradition was sought also included attempting to abolish the Government and establishing and leading an armed terrorist organisation.
22. I should add that Mr Ipek strongly denies any criminal activity. He considers that he is being unjustly persecuted as a result of his known opposition to the current government in Turkey.
23. On 28 November 2018, District Judge Zani sitting in the Westminster Magistrates Court refused the extradition request, ruling that the decision to prosecute Mr Ipek was politically motivated by reason of his actual or perceived political views as an alleged member and supporter of the Gülenist movement, and further that he was exposed to a real risk of breach of Article 3 of the European Convention on Human Rights

(“**ECHR**”) (which prohibits torture and inhuman or degrading treatment) if he were to be extradited to Turkey.

24. The Government of Turkey was refused permission to appeal this decision by Supperstone J on 5 March 2019. The Government of Turkey renewed its application for permission to appeal, and this again has been refused (by Laing J, as she then was) on 9 April 2019.
25. On 9 January 2020, as Mr Ipek and certain other subjects of the criminal proceedings had not been apprehended, and could not be tried *in absentia*, the proceedings against them were separated and assigned a new case number. An order was made continuing the “trusteeship” regime pending their apprehension and trial.
26. On 14 April 2023 the Turkish Court of Cassation ordered that the Koza Group companies should be confiscated, without prejudice to the rights of *bona fide* shareholders and third parties. The meaning of this order is somewhat unclear to me – I do not understand how a company can be confiscated without all of the shares in the company being confiscated. Nevertheless, it appears that the result is that all the non-publicly traded shares in the Koza Group (including Türk Altin) were transferred to the Turkish Ministry of Treasury and Finance.
27. On 19 August 2024 a Turkish Presidential decree issued by President Erdoğan (the “**Presidential Decree**”) ordered the transfer of the privately held shares in the Koza Group (including Türk Altin) to the TWF, and they were so transferred.
28. Whilst Mr Ipek may consider he still has grounds for overturning the judgments and orders referred to above, he accepts that they are currently in effect.
29. Mr Ipek had been reserving a right to contend that some or all of such judgments are not capable of recognition in England and Wales (and that accordingly the directors purporting to represent Türk Altin are not validly appointed) but (as I discuss further below) has agreed not to take this point to challenge any resolutions passed by those directors.
30. There are outstanding applications made in the Turkish courts against the confiscation decision. Mr Ipek has also intimated an intention to make applications to the ECtHR if those applications fail. The parties disagree about whether it is even possible for Mr Ipek and his family to regain control of the Koza Group, even if those applications succeed. Mr Gezgin, Türk Altin’s expert in relation to Turkish law has provided an opinion that this is not possible in light of the Presidential Decree. Dr Ozbey, Mr Ipek’s expert on Turkish law, disagrees.
31. Türk Altin argues that in any event, Mr Ipek’s applications, and any consequent retrial process, may take over a decade to play out, during which time Türk Altin would remain out of the control of the Ipek family. Indeed, given Mr Ipek’s status as a fugitive, and the inherent unlikelihood of him returning to Turkey to face trial, it is likely that the Koza Group of companies would remain out of the control of the Ipek family indefinitely, even if the applications relating to the confiscation succeeded and even if it were theoretically possible to return ownership to the former owners.

32. Türk Altin does not consider that its own ownership or control is relevant to this Petition or this application. I agree. Mr Ipek has accepted that Türk Altin's current directors have the authority to cause it to present and prosecute this Petition. I agree with Türk Altin's submission that there is no need or warrant to seek to look behind that authority, or to speculate about what may or may not be in Türk Altin's best interests according to others (such as Mr Ipek), or who may or may not control the company years from now.

(c) *The A ordinary share*

33. Türk Altin disputes that Mr Ipek's A ordinary share has been validly issued, but all parties agree that the court should conduct this hearing on the assumption that it has been.
34. Assuming that Mr Ipek's A ordinary share has been validly issued, Mr Ipek has a veto over (amongst other things) changes to the composition of the board of Koza Ltd.
35. Originally two class A ordinary shares were created and issued (or purportedly created and issued) on 11 September 2015. This was done at a time when Mr Ipek or his family still had effective control of Türk Altin and was undertaken with the intent of entrenching Mr Ipek's control of Koza Ltd at management level. One of those shares have since been surrendered to Koza Ltd, leaving Mr Ipek as the sole holder of an A ordinary share.
36. Article 3 of the Company's articles of association (the "**Articles**") provides that the holders of the A ordinary shares have no right to income, no right to a distribution on a winding up (other than the return of the £1 paid up on each A ordinary share) and no voting rights. The only significant advantage that is afforded to a holder of an A Ordinary Share is that provided by article 26 of the Company's articles of association ("**Article 26**").
37. Article 26 provides as follows:
- "26.1 Each shareholder shall exercise all voting rights and powers of control available to him in relation to the Company to procure that, save with A Shareholder Consent, the Company shall not effect any of the following matters
- (a) Permit or cause to be proposed any amendment to the Articles,
- (b) Permit the appointment or removal of any person as director of the Company, or
- (c) Permit the Company to take any step to place the Company into administration or receivership or wind up the Company (save where it is insolvent within the meaning of section 123 of the Insolvency Act 1986)
- 26.2 As a separate obligation, severable from the obligations in clause [*sic*] 26.1, the Company agrees that, save with A

Shareholder Consent, the Company shall not effect any of the matters referred to in subparagraphs (a) to (c) of Article 26.1 above.”

38. An “A Shareholder Consent” is defined as “the prior, signed written consent of each A Shareholder”. The phrase “A Shareholders” is defined as “the holders from time to time of A Ordinary Shares”.
39. There is however no exclusion (or purported exclusion) of the right of Türk Altin to petition the court for winding up on the just and equitable ground.

(d) *The ordinary shareholders’ Article 4 rights*

40. Article 1.1 of the Articles makes applicable the Model Articles contained in Schedule 1 to the Companies (Model Articles) Regulations 2008.
41. Article 3 of the Model Articles provides that:
- “the directors are responsible for the management of the company’s business”.
42. However, Article 4 of those Model Articles (“**Article 4**”) provides (at Article 4(1)) that
- “The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action”.
43. The combination of these provisions creates fertile ground for a stand-off between the ordinary shareholder of Koza Ltd (Türk Altin) and its sole director.

(e) *The 2016 and 2021 Proceedings*

44. Türk Altin and Mr Ipek have been in dispute over Koza Ltd since 2016 in two sets of proceedings commenced by Mr Ipek and Koza Ltd (acting at his direction) (the “**2016 Proceedings**” and the “**2021 Proceedings**”). A broad summary of these proceedings is as follows.
45. In 2016, Türk Altin attempted to change the board of Koza Ltd by calling a general meeting with a view to removing Mr Ipek as a director. In response, Mr Ipek and Koza Ltd (acting at his direction) commenced the 2016 Proceedings. His case was based on two main contentions:
- i) that Türk Altin’s attempt to change the board was ineffective because of Mr Ipek’s A ordinary share and Article 26 (the “**English Company Law Claim**”); and
 - ii) that the court should not recognise the authority of those in control of Türk Altin (i.e. its directors) to cause it to do anything as a shareholder of Koza Ltd (the “**Authority Claim**”).
46. Meanwhile Türk Altin filed a defence and counterclaim in the 2016 Proceedings and counterclaimed for a declaration that Article 26 is invalid and asked for related relief in relation to the shareholder resolution amending Koza’s Articles to introduce Article 26.

47. Türk Altin also challenged the English court's jurisdiction to hear the Authority Claim, in circumstances where the only basis relied on by Koza and Mr Ipek for jurisdiction was exclusive jurisdiction under the Brussels Recast Regulation (the "**2016 Jurisdiction Application**"). The 2016 Jurisdiction Application ultimately succeeded after going all the way to the Supreme Court (see *Akçil v Koza Ltd* [2019] WLR 4830).
48. Mr Ipek and Koza Ltd sought in 2021 to renew the Authority Claim in the 2021 Proceedings (Claim No. BL-2021-000515). The Supreme Court had decided that the English court did not have exclusive jurisdiction but left open the question of whether jurisdiction could be established at common law.
49. In March 2021, the Company (later joined by Mr Ipek) issued the 2021 Proceedings against Türk Altin and its directors, seeking, amongst other things, a declaration that the directors did not have authority to represent Türk Altin, and applied for permission to serve the 2021 Claim outside the jurisdiction.
50. The Company and Mr Ipek were refused permission to serve out on the basis that there was no serious issue to be tried in respect of the Authority Claim. An appeal against the refusal was dismissed (see *Koza Ltd v Türk Altin Isletmeleri AS* [2022] EWCA Civ 1284), and the Supreme Court refused permission to appeal on 1 February 2023. Whilst it may be considered that the Authority Claim is now defunct, Mr Ipek (up to the first day of the hearing of the hearing leading to the First SJA Judgment) had reserved his right to continue to maintain this claim.
51. There remains outstanding as substantive litigation between the parties only the 2016 Proceedings in relation to the English Company Law Claim and the related counterclaim.
52. Mr Ipek and Koza Ltd have taken no steps to advance this claim and Türk Altin also has taken no steps to advance its counterclaim or otherwise bring this to a conclusion, preferring instead to advance its claim for winding-up on the grounds of this being just and equitable and now through its Part 8 claim.

(f) The Interim Regime

53. The Interim Regime has comprised about 18 different orders from time to time, made between December 2016 and February 2023. The purpose of the Interim Regime has been to hold the ring pending determination of the 2016 Claim, including Türk Altin's counterclaim about the validity of Article 26, although Türk Altin argues that it has been ineffective in doing so.
54. The nature and scope of the Interim Regime have changed over time; in particular, it has grown and shrunk. The chronology is complex, but in summary:
 - i) The first iteration of the Interim Regime became embodied in an order of Asplin J dated 21 December 2016 (the "**Asplin Order**"). That imposed restraints on both sides:
 - a) Türk Altin was restrained from calling any general meetings of Koza Ltd or passing *any* shareholder resolutions (in light of the fact that the Authority Claim was then live); and

- b) Koza Ltd undertook to deal with its funds only in the ordinary and proper course of business, and also to give Türk Altin advance notice of any new projects or expenditure over £25,000.
- ii) On 31 March 2021, Trower J added to the Interim Regime by ordering that Koza Ltd was to provide Türk Altin, quarterly, with:
 - a) a list of all of its assets, together with the actual or estimated value of the same;
 - b) confirmation of the balance remaining of the £60m with which it was capitalised; and
 - c) its latest management accounts and cash flow forecast.
- iii) Trower J also ordered that Koza Ltd must not spend any sums or incur any liabilities in connection with the costs of the 2016 or 2021 Proceedings (as Mr Ipek had been causing it to do), subject to specific limited exceptions.
- iv) On 17 June 2022, HHJ Gerald ordered that Koza Ltd must not deal with any of its assets other than in the ordinary and proper course of business (i.e. the Interim Regime was extended beyond merely dealing with funds) and made various ancillary orders (the “**Gerald Order**”). The application for the Gerald Order was triggered by Türk Altin’s discovery that Koza Ltd had transferred 99% of its interest in its principal mining project (the “**SAM Alaska Project**”) to a Delaware subsidiary for a nominal consideration of US\$100 and that Mr Ipek apparently contemplated rerunning the Authority Claim again in Delaware in the event that his control of Koza Ltd in this jurisdiction was removed.
- v) On 13 July 2022, Murray Rosen QC (now KC) ordered the continuation of the Gerald Order, and also tightened up the restrictions on Koza Ltd in the Asplin Order, such that under his order (the “**Rosen Order**”):
 - a) Koza Ltd was not to make any individual payment of £2,500 or more, or make payments in aggregate of £25,000 per month, or incur any individual liability of £2,500 or more, or incur liabilities in aggregate of £25,000 per month, except where spending such sums or incurring such liabilities is:
 - i) agreed with Türk Altin in writing to be in the ordinary and proper course of business, such agreement not to be unreasonably withheld or delayed;
 - ii) specifically permitted by the court; or
 - iii) required pursuant to a pre-existing legal obligation the satisfaction of which by Koza Ltd is mandatory; and
 - b) 96 hours’ advance notice was to be provided of any payments or liabilities falling within category (iii).

- vi) On 26 January 2023, HHJ Jarman KC ordered by consent that the Gerald and Rosen Orders would continue, and also:
 - a) added what was effectively an anti-suit injunction to the Gerald Order, preventing Koza Ltd and Mr Ipek from re-running the Authority Claim in the US; and
 - b) added to the information that Türk Altin was required to be given in respect of payments falling within category (iii), and also payments made to a company called Whitehall Consulting Partners Ltd (“**Whitehall**”).
 - vii) On 10 February 2023, following the Supreme Court’s refusal of permission to appeal the decision that there was no serious issue to be tried in respect of the Authority Claim, HHJ Jarman KC varied the Asplin Order so that the restraint on Türk Altin reflected only the actions specified in Article 26, and made expressly clear that it “shall not prevent [Türk Altin] from exercising any other voting rights or powers of control available to it in respect of Koza Ltd”.
55. In summary, Koza Ltd has since 2016 been subject to restraints, and since July 2022 very severe (but Türk Altin would say justified) restraints, such that any material expenditure (and therefore decisions) should be subject to Türk Altin’s or the court’s consent. Türk Altin was originally constrained from passing special resolutions, but is now permitted to do so, save as expressly prohibited by (the disputed) Article 26. Under the terms of the Interim Regime as it now stands:
- i) Türk Altin may not pass special resolutions in respect of matters covered by Article 26 (including removing directors and passing a resolution to wind up the Company);
 - ii) Koza Ltd may not, and Mr Ipek may not cause Koza Ltd to, deal with its assets other than in the ordinary and proper course of its business;
 - iii) Koza Ltd may not, and Mr Ipek must not cause Koza Ltd to, make any payments or incur any liabilities over £2,500 individually, or over £25,000 in aggregate per month, except where the payment or liability is: (a) specifically permitted by the court; (b) agreed with Türk Altin in writing to be in Koza Ltd’s ordinary and proper course of business, or (c) made pursuant to a pre-existing legal obligation; and
 - iv) Koza Ltd has certain reporting obligations to Türk Altin.
- (g) *Disputes over the business of Koza Ltd*
56. Türk Altin argues that the Interim Regime has manifestly failed to “hold the ring”. Certainly, I agree that it has been a source of repeated and continuing dispute requiring frequent revision. Türk Altin also considers that if it persists, it will almost certainly continue to generate disputes in the future.
57. Türk Altin argues also that Mr Ipek has refused to comply with special resolutions. Mr Ipek argues that this was for good reasons. Again, I will discuss this further below.

3. SUMMARY OF TÜRK ALTIN'S GROUNDS FOR WINDING UP

58. In summary, Türk Altin's position is that a winding up of Koza Ltd is justified on the following grounds and that each of these grounds can be established to the standard required for summary judgment:
- i) Türk Altin is the 100% economic owner of Koza Ltd (and will remain so irrespective of the outcome of the 2016 Proceedings) but has been locked out of the Company's affairs for over 9 years now, and will remain so in the absence of yet further litigation if the Company is not wound up.
 - ii) Türk Altin and Mr Ipek have been unable to agree on the management of the affairs of Koza Ltd as evidenced by the need for and disputes over the Interim Regime and the continued disagreement about the propriety of the depletion of Koza's funds and the future planned depletion of them. Mr Caplan KC (Türk Altin's leading counsel) was frank at the last hearing in saying that Türk Altin no longer wanted to continue the business whilst its management was in the hands of Mr Ipek. Türk Altin points to a number of historic disagreements between the parties that concern the management of the company including disagreements about how much the company should pay its CEO (Mr Ipek); whether its money should be expended on funding an arbitration being brought by an Ipek family company or on legal costs to further Mr Ipek's position in the shareholder dispute; whether it should plough more money into SAM Alaska; what office premises it should have to name but a few. In particular there is a fundamental disagreement as to whether the Company should continue in its business. Türk Altin does not wish to continue to be exposed to the risks of the business as it exists (and certainly while it is being run by Mr Ipek) and wishes the business to be wound down. Mr Ipek wishes to continue the business in its current form, or alternatively for there to be a sale of its assets or at least its main asset to purchasers he has identified.
 - iii) Mr Ipek has refused to comply with special resolutions passed by Türk Altin in its capacity as sole voting shareholder. Türk Altin and Mr Ipek are now totally unable to agree on the future of Koza Ltd. Türk Altin wants to realise its investment in Koza Ltd. Mr Ipek wants Koza Ltd to continue to pursue the SAM Alaska project (although he now sees no value in pursuing its other projects).
 - iv) Far from the impasse being (as Mr Ipek has claimed) simply a result of Koza Ltd's corporate constitution, it is in fact reflective of Mr Ipek's failure to comply with the corporate constitution and very different views as to what should be the future of the business.
 - v) The continued antagonism between the parties means that they are irreconcilably opposed to one another and there is no prospect of rapprochement.
59. Türk Altin also argues that there is urgency to resolve the position before Koza Ltd runs out of money. Koza Ltd was capitalised with £60m and had cash reserves of around £67m as at the end of 2016, but as at the end of January 2025 it had just over £7m in liquid funds. This expenditure has failed to generate any income from its mining

projects which remain a long way from fruition and will require substantial further capital to be brought to fruition.

60. These grounds remain challenged by Mr Ipek (who notes for example that the Company's projected costs have also recently decreased from around £200,000 per month to around £128,625 per month).
61. Before considering these arguments I will put the discussion in the context of my findings and rulings in the First SJA Judgment.

4. LEGAL PRINCIPLES: SUMMARY JUDGMENT

62. In the First SJA Judgment I set out the following legal principles applicable to an application for summary judgment, noting them to be in large part agreed among parties, although with differences of emphasis.
63. Both parties agree that the summary of the law provided by Lewison J (as he then was) in *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] essentially encapsulates the approach the court should take - the main principles being:
- i) the court must consider whether the claimant (which here needs to include the respondent to the petition, i.e. Mr Ipek) has a "realistic" as opposed to a "fanciful" prospect of success that is one that carries some degree of conviction and is more than merely arguable;
 - ii) in reaching its conclusion the court must not conduct a "mini-trial" – but this does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court: in some cases it may be clear that there is no real substance in factual assertions made;
 - iii) however, in reaching its conclusion, the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial;
 - iv) although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment: thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case;
 - v) on the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it;
 - vi) if material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is

likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction.

64. Mr Ipek's counsel had argued, and continue to argue, that Türk Altın's application requires more than a mini-trial: it calls for a summary determination of deeply disputed issues across about 9,000 pages of evidence and no fewer than four expert reports. They argue further that a petition to wind up a company on the just and equitable ground is inherently unsuited to summary determination and that the Petition in this case contains material disputes of fact that require full ventilation at trial, and it is only then that a court can be expected to exercise its broad equitable discretion. They point out that three important recent examples all proceeded after multi-day, fact-heavy trials. These were:
- i) *Lau v Chu* [2020] UKPC 24; [2020] 1 W.L.R. 4656, ("**Chu**"), which involved a six-day trial;
 - ii) *Duneau v Klimt Invest SA* [2022] EWHC 596 (Ch); ("**Klimt**"), which involved a seven-day trial; and
 - iii) *Dosanjh v Balendran* [2025] EWHC 507 (Ch) ("**Dosanjh**"), which involved a four-day trial.
65. In the First SJA Judgment I found that the fact that winding-up petitions on just and equitable grounds have gone to a full hearing does not of itself demonstrate that this type of proceeding cannot be dealt with on a summary basis. I noted that in *Ringtower*, Peter Gibson J considered it possible to strike out such a petition without a petition going to trial.
66. Türk Altın had argued, and continues to argue, that its case is made out without having to review and make findings about this evidence: essentially its case is simple, it is that it is insupportable for a company to be managed by a director that it cannot remove or replace and who is fundamentally at odds with it as to what should be the future of the company. This point can be demonstrated conclusively from facts that are either agreed or a matter of record and therefore the case is one that is entirely suitable for summary judgment.
67. I noted that counsel for Mr Ipek also had argued that this is a case where relevant legal principles (in particular the relationship between a shareholder's right to give directions under Article 4 and duties of directors) are not fully developed and in such cases it is inappropriate to give summary judgment, as was found by Longmore LJ in *Doncaster Pharmaceuticals Group Ltd v The Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 3 (CA) at [92] ("**Doncaster Pharmaceuticals**").
68. I noted further that in *Harrington & Charles Trading Company Limited v Mehta* [2023] EWHC 2420 (Ch) at [120], Miles J (sitting with Master Kaye) referred to another passage in *Doncaster Pharmaceuticals* where Mummery LJ said:

“Although the test can be stated simply, its application in practice can be difficult. In my experience there can be more difficulties in applying the “no real prospect of success” test on an application for summary judgment ... than in trying the case in its entirety The decision-maker at trial will usually have a better grasp of the case as a whole, because of the added benefits of hearing the evidence tested, of receiving more developed submissions and of having more time in which to digest and reflect on the materials”

69. Miles J said about this that:

“... this wise guidance may also apply to legal questions as well as factual ones: in large and difficult cases, the court is more likely to be able to get to the right answer in light of the facts as found and after prolonged immersion in the case in the way that can only be achieved at a trial.”

70. Whilst I acknowledged the wisdom in these dicta, I considered that this did not mean that it is always the case where there is a developing area of law that the matter needs always to go to trial. As I noted Lewison J pointed out in *Easyair* at [15(viii)] of his judgment, that where the case raises a point of law and:

“the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it.”

Further, in *JP SPC 4 v Royal Bank of Scotland International Ltd* [2023] AC 461 at [30], Lords Hamblen and Burrows JJSC, on considering a submission that where a strikeout or summary judgment application turns on a complex and developing area of the law, it is best left to be determined after a trial on the basis of actual rather than hypothetical facts considered that:

“This must depend on the extent to which the issue of law is fact dependent. Where all the relevant facts can be identified there is no reason why the issue of law cannot be determined and, indeed, it will often be consistent with the overriding objective of the Civil Procedure Rules (CPR Part 1) for that to be done, in the interest, in particular, of saving time and costs.”

71. Finally, I noted that counsel for Türk Altın had made the point that the relief that they are considering is a discretionary relief. I accepted (and still accept) their argument that, where the court is being asked exercise discretion or to provide an evaluative decision by way of summary judgment, the court does not ask itself on a summary judgment application whether it is arguable that a court hearing a full trial would exercise the discretion or make the decision one way or the other – it makes the decision itself as to whether to do so on the basis of the facts before it. In such cases the task of the court is:

- i) first to determine whether the facts and matters relied on as providing the basis for the exercise of the discretion or the making of the decision are made out to the summary judgment standard; and
- ii) having done so, then to exercise the discretion or make the decision, on the basis of the facts and matters so established, in the usual way.

72. I noted that this proposition had been supported by Mr Robin Vos, sitting as a Deputy High Court Judge in *Abaidildinov v Amin* [2020] EWHC 2192 (Ch) at [47]-[49] where he said:

“47 In approaching an application for summary judgment where the relief sought is the making of a declaration, this must in my view be the correct approach. Whether or not the underlying facts or matters relevant to the declarations are made out is the key issue as far as summary judgment is concerned. If the defendant has a real prospect of successfully defending the points put forward by a claimant in support of the declarations, summary judgment should not be granted.

48 However, once it is established that the defendant has no real prospect of mounting a successful defence in respect of those facts or matters, it is unlikely to be in accordance with the overriding objective to require a full trial in order to decide whether the court should exercise its discretion to make the declarations which have been sought. In terms of costs, this would in most cases be entirely disproportionate where it has already been found that there is no realistic dispute in relation to the underlying facts or matters. Although there may still be disputes as to some of the facts which may be relevant to the court’s balancing exercise in deciding whether to exercise its discretion to make or refuse to make the declarations, this should not be a reason for refusing to undertake that task or, in most cases, being unable to undertake that exercise.

49 The reference to the “claim or issue” in CPR r 24.2(a)(ii) must therefore in my view refer to the underlying facts or matters to which the declaration relates and not to the question as to whether, as a matter of discretion, the court should make the declaration, once it is satisfied in relation to those underlying facts or matters.”

73. I noted further that this approach was also endorsed by Cockerill J in *Banca Nazionale del Lavoro SpA v Provincia di Catanzaro* [2023] EWHC 3309 (Comm) at [63], where she said:

“In the case of declaratory relief, the proper approach is set out in *Abaidildinov v Amin* [2020] EWHC 2192 (Ch). The Court will grant summary judgment where the defendant had no real prospect of successfully defending the relevant “*claim or issue*”, which refers to the underlying facts or matters which are the

subject of the declaration. If the applicant can show that the defendant had no real prospect of showing that those matters are wrong, the Court should exercise its discretion to make the declaration in the normal way, rather than by reference to the summary judgment test.”

74. Whilst I considered that these cases established the proposition that Türk Altin was advancing as to the relevance of the discretionary element, I noted that this only goes so far, however, where the relief being sought is the discretionary relief of a winding-up on the just and equitable ground, in that, if the court considers that the facts are established to find a basis justifying such a winding up, but considers that it does not have sufficient evidence of all the facts that should properly weigh on the exercise of its discretion, then it would be open to the court to refuse the exercise of its discretion until it was satisfied that it had all the facts.

5. LEGAL PRINCIPLES: JUST AND EQUITABLE WINDING-UP

75. In the First SJA Judgment I also set out the following legal principles applicable to a petition for a just and equitable winding-up. This summary remains equally valid in relation to the Second SJ Application.

76. Türk Altin relies on s.122(1)(g) of the Insolvency Act 1986 (“**IA 1986**”) under which a company may be wound up if:

“the court is of the opinion that it is just and equitable that the company should be wound up.”

77. Section 125(2) of IA 1986 provides further that:

"(2) If the petition is presented by members of the company on the ground that it is just and equitable that the company should be wound up, the court, if it is of the opinion –

(a) that the petitioners are entitled to relief either by winding up the company or by some other means, and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up, shall make a winding up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy."

78. The scope and principles for a just and equitable winding up were described by HHJ Mark Cawson QC as he then was (sitting as a judge of the High Court) in *Klimt*. He noted:

- i) (at [187]) that the remedy has been described as one “of last resort and an exceptional remedy in the context of disputes between shareholders” – hence the wording of section 152(2);

ii) at [188] that:

“In *Lau v Chu* [2020] UKPC 24; [2020] 1 W.L.R. 4656, at [20]-[21] per Lord Briggs JSC, the Privy Council held that the legal burden of proof is on the applicant to establish his or her entitlement to relief and, if so, that a winding up would be just and equitable if there were no other remedies available, but that if the petitioner can so establish, then the legal burden of proof shifts to the respondent to prove that the petitioner has unreasonably failed to pursue some other available remedy rather than seeking a winding up.” and

iii) at [190] that:

“As emphasised by Dillon J in *Re St Piran Ltd* [1981] 1 W.L.R. 1300 at 1307: “The words “just and equitable” are wide general words to be construed generally and taken at their face value. Whether in any case a winding up order should be made would depend on a full investigation of the facts of the particular case ... The concept of justice and equity is a very wide concept ...”

iv) (at [191]-[192]) that:

“191. In *Re Westbourne Galleries* [1973] AC 360, Lord Wilberforce, having rejected the notion that the expression “just and equitable” required to be construed so as only to include matters ejusdem generis the preceding clauses to the then Section 222(f) of the Companies Act 1948, stated that: “...there has been a tendency to create categories or headings under which cases must be brought if the [just and equitable] clause is to apply. This is wrong. Illustrations may be used, but general words should remain general and not be reduced to the sum of particular instances...”

192. Further, subsequently at 379B, Lord Wilberforce said: “The foundation of it all lies in the words “just and equitable” and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force”.”

v) (at [193]) that Lady Arden JSC had approved the approach of Lord Wilberforce as regards keeping the general words general and had noted in particular that it was impossible or undesirable to define the circumstances in which equitable considerations could arise;

vi) (at [194]) that, whilst the jurisdiction is most often invoked in circumstances where the company is in substance a partnership, it is clear that the jurisdiction is not so limited, and: “may be invoked whenever justice and equity require” (here quoting Peter Gibson J in *Ringtower*, at 91F); and

vii) (at [194]) that:

“Whilst recognising that the categories or headings under which a just and equitable winding up petition might be brought ought not to be regarded as limited or reduced to the sum of particular instances, recognised grounds for seeking a winding up on the just and equitable ground include a loss of substratum, and a breakdown of trust and confidence within a quasi partnership.”

79. Where a case is made out by a claimant that it would be just and equitable for a company to be wound up the court needs also to consider s.125(2) IA 1986: the court may decline to wind up a company if the court is:

“of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.”

80. An unreasonable refusal to accept a fair offer for an applicant’s shares might bar a winding-up (see, for example *Chu* at [21]). This point is developed further in Section 15 below.

6. CONSIDERATION IN THE FIRST SJA JUDGMENT OF THE GROUNDS FOR JUST AND EQUITABLE WINDING-UP

81. In the First SJA Judgment I explained that I consider that the core argument put forward by Türk Altin as supporting the petition as being that set out in paragraph 69 of its Points of Claim to the effect that the Company is in a position of deadlock in that Türk Altin and Mr Ipek have been, and continue, to be unable to agree about the conduct of the Company with the result that the holder of all the economic rights in the Company does not have control of it, and the person who does have control of it has no material economic interest in it, has so far spent or caused it to spend most of its money, and is antagonistic towards the economic owner.
82. I noted, and note, that this assertion is particularised in the following sub- paragraphs of paragraph 69 or the Points of Claim. I summarised as follows the assertions made in the subparagraphs, together with what I was able to say about them on summary judgment.
83. Subparagraph (1) asserts that Türk Altin is unable to take any steps to exercise powers that are covered by Article 26. I agree that this is self-evidently true as a result of the Interim Regime and is overwhelmingly likely to remain so unless and until the 2016 Claim is determined (and then only if it is determined in favour of Türk Altin).
84. Subparagraph (2) asserts that, if Türk Altin is successful in the 2016 Claim it will be entitled to full control and the deprivation of control that Mr Ipek has caused it to suffer since the commencement of the 2016 Claim would have been unlawful. The first part of this clearly is correct. The second part of this had not (and still has not) not been argued before me and I made and make no determination about it.
85. Subparagraph (3) asserts that if Türk Altin is not successful in the 2016 Claim the position described in subparagraph (1) would continue. This also is clearly correct.

86. Subparagraph (4) asserts that Türk Altin, Mr Ipek and the Company have engaged in significant and protracted litigation in respect of the management of the Company and had been unable (and I would say now, remain unable) to agree how the resources held by the Company should be expended. I considered, and continue to consider that this proposition, cannot seriously be disputed. It may be, and is being, disputed who is at fault in relation to individual matters over which the Türk Altin and Mr Ipek have fallen out, but it cannot be disputed that the parties have been at loggerheads.
87. Further, it was (and remains) clear that this dispute has at its core a fundamental issue. Türk Altin does not want to continue its exposure to the business of the Company, certainly while it remains under the stewardship of Mr Ipek. Türk Altin has attempted through an agreement referred to as the “EPA” to bring about a sale of the Company’s principal asset. Mr Ipek has sought to block that sale.
88. As I discuss below, I considered, and I continue to consider, that Mr Ipek may have had good reasons for that, given the terms of the EPA. However, what was and remains clear is that instead of trying to engage with Türk Altin and to try to explain his concerns and to see if they could be overcome (for example by ensuring that the proceeds of the sale would come to Koza Ltd and/or be held on trust for it and/or or that any benefit to Türk Altin would be made in a lawful way (for example as a dividend or a lawful return of capital), Mr Ipek had merely blocked the position (and continues in that stance to this day)). This does evidence fundamental differences between him and Türk Altin.
89. Subparagraph (5) asserts that the available resources of the Company have rapidly diminished since the Company was originally capitalised; the Company is not generating any income from its mining projects and its projects appear to be dormant; the Company will be unable to generate income from the SAM Alaska Project without significant further capital expenditure which was not available to the Company and there is a real prospect of the Company running out of funds before the 2016 Claim is resolved. I did not (and do not) consider that there was any serious challenge to any of these facts, except that:
- i) Mr Ipek would say that the fact that the available resources of the Company have diminished (which I consider to be a reference to the Company’s cash and its liquid investment portfolio) ignores the fact that the Company still has what were in his view still valuable illiquid assets in the form of its investments in mining projects (although now it seems that his view is confined to considering that it is only the SAM Alaska project that is of value);
 - ii) it has been suggested to me that Mr Ipek considers that it may be possible to raise funds to finance further capital expenditure. I considered it to be unlikely that funds could be raised on reasonable terms that would benefit the Company while this dispute is continuing, however I did not think that this was something that I could find on a summary basis;
 - iii) Mr Ipek, whilst he acknowledged that there is a “burn rate” applying to the Company’s cash considered that it should be possible to resolve the 2016 Claim before all the liquid assets ran out, (although, as we considered the figures, the margin for this seemed to be at best a matter of months) and suggests that if not then the remedy is for the parties to ask for the dispute to be dealt with on an expedited basis.

90. Subparagraph (6) asserts that Mr Ipek has refused to comply with Special Resolutions and to provide information to be given to Türk Altin under those resolutions. As a statement of fact this is not in dispute, although as I will discuss, Mr Ipek argues that he had good reasons to refuse to comply with the Special Resolutions referred to then. Since the First SJA Judgment, further Special Resolutions have been passed, as I discussed further below and Mr Ipek has largely refused to comply with those resolutions also.
91. Subparagraph (7) asserts that the Interim Regime is, and has been, complex to implement, is generative of disputes and places a significant resource burden on the Türk Altin, Mr Ipek and the Company. I did not, and do not consider any serious argument could be advanced against this contention.
92. Mr Sheehan KC had argued that the Interim Regime will come to an end when the 2016 Claim is determined (which could be done on an expedited basis) and therefore this position will not continue forever. I considered (and still consider) that this likely would be true if the 2016 Claim is resolved in favour of Türk Altin - no doubt Türk Altin would take the first opportunity to terminate Mr Ipek's directorship and there would be no further such disputes. However if the 2016 Claim is resolved in Mr Ipek's favour, then, I consider it fanciful to believe either that Mr Ipek will be happy to run the Company in a manner that accords with the wishes of Türk Altin or that Türk Altin will be happy to let Mr Ipek exercise the powers of a sole director as he sees fit without interference. Accordingly it seems overwhelmingly likely that in these circumstances the parties would continue their frequent recourse to the court.
93. Subparagraph (8) asserts that the position that Mr Ipek has taken in the 2016 and 2021 Claims makes it clear that he is antagonistic towards Türk Altin. I did not think, and still do not think, that there is any doubt that Mr Ipek is antagonistic towards Türk Altin under its current management. Mr Ipek considers that he has been unfairly deprived of his interests in the Koza Group for political reasons and that the current management of Türk Altin represents the government of Turkey that has brought this about. I considered, and continue to consider, that this antagonism is likely to continue at least until there is a change of the government in Turkey and/or a change in the management of Türk Altin.
94. These propositions all lead up to subparagraph (9) which asserts that the parties are therefore:
- “... in a situation in which the 100% economic owner of the Company does not have control of it, and the person who does have control of it has no economic interest in it (either at all or that is more than nominal), disagrees with the 100% economic owner as to how to manage it and its resources, has so far spent or caused it to spend most of its money, is continuing to spend or cause it to spend its money, and is antagonistic towards the economic owner.”
95. Subparagraph (9) may be broken down into the following key propositions:
- i) Türk Altin is the 100% economic owner;

- ii) Mr Ipek has no, or merely a nominal economic interest in it;
 - iii) Türk Altin does not have control of Koza Ltd;
 - iv) Mr Ipek does have control of it;
 - v) Mr Ipek disagrees with Türk Altin as to how to manage it and its resources;
 - vi) Mr Ipek has so far spent or caused it to spend most of its money, is continuing to spend or cause it to spend its money; and
 - vii) Mr Ipek is antagonistic towards the economic owner.
96. I noted that I had already discussed the matters summarised at points (v), (vi) and (vii) above and had considered them to be sufficiently well established to be relied upon in the context of a summary judgment. This remains my finding. However, I noted that the points concerning control and economic interests was disputed and dealt with these disputed matters individually.

7. IS TÜRK ALTIN THE 100% ECONOMIC OWNER?

97. Mr Ipek considered, and still considers, that it is wrong to accept the proposition that Türk Altin is the 100% economic owner. Whilst it cannot be denied that the A ordinary share that he holds gives no rights to dividend and only a right to the return of £1 of capital on a winding up (and afford him no voting rights), he argued, and still argues that the veto rights that are afforded by the share have value, and this is something the court should consider when considering what is just and equitable. In support of this contention, he has, with the permission of the court, given at the outset of the previous hearing before me, put into evidence an expert report by Mr Jonathan Jones (the “**Jones Report**”)
98. I set out in the First SJA Judgment my major concerns regarding the methodology and conclusions in this expert report. I found it to be of virtually no probative value.
99. I found that the most that could be said about the economic value of the A ordinary share was that it could be seen as having a ransom or nuisance value whilst the Company remains in business and with substantial assets, and that it also has a value in the hands of Mr Ipek (if not anyone else) in securing his ability to earn a salary from Koza Ltd. The effect is that while the Company has a substantial business the share has some value that might be well in excess the share’s only economic right, which is to receive a £1 return of capital on a winding up. Whether this makes Mr Ipek an “economic owner” is a matter of what one thinks those words mean.

8. DOES TÜRK ALTIN HAVE NO CONTROL?

(a) *The position up to the hearing of the First SJ Application*

100. Turning to the question whether Türk Altin had no control, I noted that up to the hearing of the First SJ Application Türk Altin had an extremely strong argument that it was not in control of the Company. Clearly, unless and until the 2016 Proceedings are

determined in its favour, it had, and could obtain no control at board level. Mr Ipek remains the sole director and cannot be removed. This remains the case.

101. I noted that only in theory was this point mitigated by Türk Altin's ability to give directions under Article 4 while Mr Ipek was reserving a right in the future, to challenge the ability of the current directors of Türk Altin to pass any such resolution: Türk Altin was on notice that any control that Türk Altin might have through passing a resolution under Article 4 (or otherwise) potentially might require another visit to court.
102. In view of Mr Ipek's change of position, as discussed below, I considered that I did not need to determine this point. However, I went as far as to say that before this change of position I considered that the argument that there was a deadlock was a strong one. Whilst in theory a deadlock on any matter (other than changes impinging on Article 26) could be resolved by a direction under Article 4, Türk Altin was effectively on notice that Mr Ipek considered himself free to ignore any such direction if it was passed by the existing directors of Türk Altin.
103. Mr Ipek's counsel, noting that Türk Altin's case was based in principle on the assertion that there is a "deadlock", had poured doubt on whether the circumstances really can be said to amount to "deadlock" as the courts have interpreted that phrase in the past. Referring to *Chu* at [14], his counsel noted that a winding-up may be just equitable where there is a "functional deadlock", meaning "an inability of members to co-operate in the management of the company's affairs" that leads to "an inability of the company to function at board or shareholder level" or otherwise being described in *Chu* as being of a "paralysing kind". They argued further (on the basis of *Chu* at [23]) that the paralysis must affect management; deadlock about "other matters is neither here nor there" if the company is "still capable of being effectively managed" and decisions can still be made "about important aspects of the direction of its business and assets".
104. I noted that this last point appears to be at odds with a case cited by Türk Altin's counsel (and described as the leading case in *Ebrahimi*): *Re Yenidje Tobacco Co Ltd* [1916] 2 Ch 426 ("*Re Yenidje Tobacco*"). This was a quasi-partnership case where two tobacconists brought their businesses together to be conducted through a private limited company, with articles that provided for deadlock between its two shareholders both shareholder and director level, and with the unusual provision that if there was deadlock at director level, the matter would go to arbitration and the arbitrators' decision would stand as a decision of the directors. Some points went to arbitration in this manner, and the two directors were not speaking to one another. Despite these circumstances, it appeared that the company was prosperous, making large profits in fact rather larger profits than before the dispute became so acute. Nevertheless the court found that it was:
- "... contrary to the good faith and essence of the agreement between the parties that the state of things which we find here should be allowed to continue."
105. Mr Caplan for Türk Altin had asked me to take two points from this case:
- i) first, that the fact that there was a mechanism (albeit one that was expensive and difficult) for differences to be settled (in that case through arbitration and he

would say in the case before me through making applications to the court) was no answer to the complaint; and

- ii) secondly, the fact that the company in question was able to trade profitably notwithstanding the deadlock was not a determinative factor in relation to the discretion.

106. I noted that Lord Cross in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 ("**Ebrahimi**") (at page 383) found that the decision in *Re Yenidje Tobacco* was not made on the ground of "deadlock", finding that:

"It is sometimes said that the order in that case was made on the ground of "deadlock." That is not so. ... although Mr. Rothman and Mr. Weinberg were not on speaking terms they communicated through third parties, the company's business was flourishing and the articles contained a provision for arbitration to which resort could be had in the event of their failing to agree on any point. The reason why the petitioner succeeded was that the court thought it right to make the order which it would have made had Mr. Rothman and Mr. Weinberg been carrying on business under articles of partnership which contained no provision for dissolution at the instance of either of them. People do not become partners unless they have confidence in one another and it is of the essence of the relationship that mutual confidence is maintained. If neither has any longer confidence in the other so that they cannot work together in the way originally contemplated then the relationship should be ended—unless, indeed, the party who wishes to end it has been solely responsible for the situation which has arisen."

107. I noted that a narrow reading of this passage would suggest that Lord Cross considered that the ratio of *Re Yenidje Tobacco* was that it was a quasi-partnership case where it was appropriate to provide a remedy equivalent to the ability of a partner to terminate partnership where he has lost confidence in the other partner.

108. However, I preferred, and continue to prefer, a more expansive reading, which I thought, and continue to think, accords better with the authorities that say that the court should not limit just and equitable winding up to particular silos. This was that *Re Yenidje Tobacco* shows that equity will in appropriate cases provide a remedy in cases where an insupportable position has arisen (otherwise than as a result of the responsibility of the party who wishes the company to be wound up) and there is no other ability to resolve the position.

109. Mr Ipek's counsel, Mr Sheehan, also had referred me to the following passage in the judgment of Lord Shaw of Dunfermline in *Loch v John Blackwood Limited* [1924] AC 783 at 788, where he said:

"It is undoubtedly true that the foundation of applications for winding up, on the "just and equitable" rule, there must lie a justifiable lack of confidence in the conduct and management of the company's affairs. But this lack of confidence must be

grounded on conduct of the directors, not in regard to their private life or affairs, but in regard to the company's business. Furthermore the lack of confidence must spring not from dissatisfaction at being outvoted on the business affairs or on what is called the domestic policy of the company. On the other hand, wherever the lack of confidence is rested on a lack of probity in the conduct of the company's affairs, then the former is justified by the latter, and it is under the statute just and equitable that the company be wound up.”

110. Mr Sheehan had suggested that I should take from this that it is necessary, in a case establishing a loss of trust and confidence outside a quasi-partnership company, to find that this arises from a lack of probity.

111. He had noted that this passage has been cited with approval in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 (“*Ebrahimi*”) by Lord Wilberforce at page 376, but I noted, on reviewing this reference, that Lord Wilberforce was approving this as an example of how deadlock is not the only reason why it would be just and equitable to wind up the company, rather than specifically endorsing a view that a lack of probity is needed in cases outside a quasi-partnership company.

112. Mr Sheehan also had referred me to the reference made to this case by Lord Cross in *Ebrahimi* at page 383 but Lord Cross in the same passage was at pains to point out that:

“ ... it is not a condition precedent to the making of an order under the subsection that the conduct of those who oppose its making should have been unjust or inequitable”

113. Finally on this point, Mr Sheehan had referred me to Lord Briggs’ judgment in *Chu* at page 4666 which did quote this passage with approval, noting that:

“That was neither a deadlock nor a quasi-partnership case. The winding up was sought (successfully) on the ground that the minority shareholder petitioner had lost confidence in the probity of the directors.”

114. I noted in the First SJA Judgment that an interesting aspect of the case was the question of how far the line of jurisprudence relating to quasi-partnerships should be applied to a different type of deadlock that does not arise in anything that is recognisable as a quasi-partnership. After all Lord Wilberforce, in *Ebrahimi* at page 360, based his reasoning as to how the words “just and equitable” should be interpreted on the point that:

“the words are a recognition of the fact that a limited company is more than a legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights expectations and obligations into say that are not necessarily submerged in the company structure.”

115. I noted that the expectations and obligations of individuals involved in a company are much easier to identify in a quasi-partnership case. It was therefore right to be cautious about applying decisions that applied in quasi-partnership decisions to other circumstances, especially in view of what Lord Wilberforce went on to say:

“The “just and equitable” provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of any personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.”

116. Mr Ipek’s counsel had suggested on the basis of this passage and also of *Re Anglo-Continental Produce Co Ltd* [1939] 1 All ER 99 at 103F (“*Anglo-Continental Produce*”) that the fact that the company’s articles give a director the power to overrule the views of the majority of shareholders does not provide a basis for winding-up, regardless of what friction may exist between them.
117. In my view, this was putting the case too strongly. First I noted that *Anglo-Continental Produce* was decided many years before *Ebrahimi*, and the approach that it appears to follow on page 103 is the approach discredited in *Ebrahimi* and later cases referenced at paragraph [73] in the First SJA Judgment of trying to confine the notion of “just and equitable” to specific types of case.
118. I considered (and still consider) that where, as in the present case, the circumstances are outside the circumstances of quasi-partnership or any of the established type of circumstance where just and equitable winding-up has been found to be appropriate, it will be necessary to go back to the equitable principles mentioned by Lord Wilberforce in order to reach a resolution.
119. In my view, the position as it stood immediately before the hearing of the First SJA Judgment, was an entirely unusual one where there is no deadlock at shareholder level (Türk Altın held all the votes) and no deadlock at board level (Mr Ipek was the sole board member) but the combination of the facts that:
- i) these parties are at loggerhead,
 - ii) the shareholder with all the economic rights has lost confidence that the sole director is managing the assets in its interests;
 - iii) that director cannot be removed; and
 - iv) that director reserves a right to ignore any directions under Article 4 (which might otherwise resolve the impasse),
- was indeed worthy of the name of deadlock.

120. I noted that, although this was not a quasi-partnership case, there were close parallels with the analysis that Lord Cross found to be the justification for the decision in *Re Yenidje Tobacco*, as I had cited at [117] in the First SJA Judgment.
121. I considered, and still consider, that shareholders are entitled to have confidence in the directors who are entrusted with the management of their assets. This confidence had clearly broken down in this case, and there were examples where the court had already determined that Mr Ipek was not acting in the interests of the Company, for example in funding litigation for his own benefit out of the assets of the Company or paying himself excessive remuneration as director. It could not be said that this breakdown in trust has arisen entirely as a result of actions by Türk Altin. I considered, and still consider, that it could not be said that Türk Altin's complaint was entirely based on an objection to the Company's unusual constitutional arrangements – it was based also on the way that Mr Ipek had used that position against the interests of the Company as perceived by its economic owner.
122. These factors (loss of trust in a director coupled with an inability to dismiss the director) provide a close parallel with the position Lord Cross considered to be relevant in *Re Yenidje Tobacco* (a loss of trust between quasi-partners without the usual ability to terminate the relationship afforded to partners). In my view the equitable considerations that pointed towards a just and equitable winding-up in *Yenidje Tobacco*, for as long as Mr Ipek was in effect reserving the right generally to ignore a direction given by means of a resolution under Article 4, pointed similarly towards resolving what I agreed had become an insupportable position here.

(b) *The position following the undertaking given in the course of the hearing*

123. During the hearing of the First SJ Application, the position changed somewhat. Mr Ipek offered to provide an undertaking to the court. After the hearing it was clarified that the undertaking he was prepared to offer would be in the following terms:

“Mr Ipek agrees to accept that the directors of Türk Altin are authorised to act on Türk Altin's behalf in all matters in relation to Koza that Türk Altin can lawfully perform as a shareholder of Koza.

The undertaking:

1. is given without prejudice to the parties' rights and obligations in terms of the orders that make up the Interim Regime
2. is given without prejudice to the pending proceedings in the Constitutional Court of the Republic of Türkiye, and any subsequent proceedings in the European Court of Human Rights, challenging the confiscation of Türk Altin, and any relief that may be granted in those proceedings, including in respect of the restoration of any confiscated shares; and
3. does not apply to litigation, claims, or steps taken or purportedly taken in terms of court orders in Türkiye.

For the avoidance of doubt, nothing in this undertaking waives Mr Ipek's rights as Director or 'A' shareholder of Koza Ltd, nor his rights in any other jurisdiction or in matters unrelated to Koza Ltd."

124. Mr Ipek's solicitors had confirmed in correspondence that the reference to correspondence being made "lawfully" was not intended to provide a back door to reopening the Authority Claim but instead was reserving a right to argue that a particular resolution may be unlawful or beyond the power of ordinary shareholder on other grounds.
125. I noted that this undertaking significantly strengthened the argument that Türk Altin retains ultimate control as it could pass a resolution that would be binding on Mr Ipek. I gave an example that, Türk Altin had expressed concerns about how much money is being spent every month (around £25,000 a month plus VAT) on a company named Whitehall which is providing consultancy, apparently mainly in the area of public relations and networking. I saw no reason why Türk Altin could not pass a resolution under Article 4 to forbid that expenditure.
126. I noted that the core of the dispute was that Türk Altin had no confidence that Mr Ipek is working in the interests of its shareholders and it wished to exit from its investments in the stalled goldmining projects in which Koza Ltd has invested, whilst Mr Ipek wishes to remain in place and to continue with these projects. I saw no reason why Türk Altin could not bring about an exit from the stalled goldmining projects and the return to it of its capital by special resolutions under Article 4.
127. It seemed to me that Türk Altin could pass resolutions requiring the director to sell the interests in the projects, not to spend the proceeds on anything else but to distribute any profits by way of dividend and to propose a reduction in capital (which Türk Altin could approve) to return any remaining capital after paying creditors (and reserving £1 so as to be able to meet the distribution due to the A ordinary shareholder on a winding up). I called this theoretical suite of resolutions the "**postulated wind-down resolutions**".
128. I concluded that, if there was no bar on Türk Altin restricting the spending of Koza Ltd and passing the postulated wind-down resolutions and these would be complied with by Mr Ipek, then it was difficult to see that Türk Altin does not have ultimate control, and also difficult to see why a winding-up was necessary.
129. I noted that I had put the postulated wind-down resolutions to Mr Sheehan to see if he agreed that this was a possible outcome, if Türk Altin wished to deal with things this way.
130. He had been unwilling to concede that it was necessarily within the powers of a shareholder resolution. He had regarded the interplay of shareholder powers and director powers to be a complex one. He acknowledged that the starting point was that shareholders have a power under Article 4 to give directors instructions, and that directors have a duty to comply with those instructions, but considered that it is difficult to say how such a duty interacts with directors' other duties and with shareholders' duties.

131. I considered in the First SJA Judgment the arguments that Mr Sheehan was advancing but did not determine any of these points as that would be inappropriate given that we were considering only hypothetical resolutions.
132. It turns out that these arguments provided a foretaste of the arguments that I will need to determine in relation to the hearing now before me as resolutions that are very similar to the postulated winding-down resolutions have been passed. One of the things that I am being asked to do is to determine the validity of those resolutions. These issues were rehearsed in much more detail in the hearing before me now and I will consider them below.

(c) *Conclusion as regards the effect of Mr Ipek's undertaking*

133. It had been relevant, however, for me to consider whether, after Mr Ipek had undertaken not question the authority of the directors of Türk Altin to pass a resolution, the rationale for a just and equitable winding up disappears – on the basis that this breaks any deadlock and provides Türk Altin with sufficient control such that it now has another way of resolving the position that it finds insupportable. My conclusion was that this probably did change the position and that certainly that I could not give summary judgment (on the basis of the facts then established before the court) on the basis of determining that it did not.
134. However, I noted that I had reached this conclusion slightly warily as the point was untested and having regard to Mr Sheehan's suggestions that Mr Ipek notwithstanding having given up the Authority Claim, might still be able to resist directions given under Article 4. Nevertheless, on the basis that the court could rely on Mr Ipek's undertaking, I considered that the application for summary judgment on the petition for winding up must be dismissed.
135. Having determined this point, there was no need for me to consider in detail the other arguments that Mr Ipek had put forward to resist the application for summary judgment, but I considered that it would be helpful nevertheless to deal with these points briefly.
136. First I considered and dismissed Mr Ipek's argument based on s.125(2) IA 1986 which provides that the court may decline to wind up a company if the court is
- “of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.”
137. Mr Ipek had argued that Türk Altin has an obvious alternative remedy in the form of offers made by him to buy Türk Altin's shares.
138. Türk Altin had raised various commercial concerns about Mr Ipek's offers, however it became apparent during the course of the hearing that Türk Altin was unlikely to accept any offer at all from Mr Ipek as it was in receipt of legal advice to the effect that dealing with Mr Ipek under the terms of any of these offers would involve it in breach of the Turkish criminal law. I did not accept that Türk Altin was being unreasonable in failing to accept, as an alternative to the winding up, the offers that Mr Ipek had made to purchase its share in circumstances where Türk Altin had received legal advice from a

respected lawyer that it would be breaching Turkish law if it were to enter into such a dealing with Mr Ipek.

139. Secondly, I dismissed Mr Ipek's argument that the Petition should be struck out or dismissed on the basis that it is brought for improper collateral purposes, namely to persecute Mr Ipek for his perceived political affiliation and/or to unlawfully expropriate his assets and/or remove the Company's assets from his control; and/or that Türk Altin has unclean hands.
140. I considered and dismissed these arguments at [186] to [125] of the First SJA Judgment. These arguments are not being further pursued and so I will not repeat my conclusions on these points.

9. CONCLUSION OF THE FIRST SJA JUDGMENT

141. The conclusion reached in the First SJA Judgment was that, had Mr Ipek not provided an undertaking to the court that he will not challenge the authority of the directors of Türk Altin to act on behalf of that company in exercising its rights as a shareholder of Koza Ltd, I would have considered that Türk Altin had made good on its contention that the circumstances were such to justify winding up on a just and equitable basis. However that position was changed by the undertaking that Mr Ipek had given. In the light of that undertaking, it was difficult to accept the argument that there was a deadlock, since the deadlock on any point (other than the composition of the board of the Company, a shareholders' winding-up resolution or an amendment to the articles) could be broken by a resolution passed under Article 4, provided that it was a lawful resolution, and not patently one that was patently against the interests of the Company or one that would cut across the provisions of Article 26.
142. I noted however that this position may change if it turns out that, notwithstanding the undertaking, Mr Ipek continues to ignore resolutions lawfully passed under Article 4. This, I considered may present new arguments as to why the Petition should succeed. However, on the basis of the facts as they stood, I considered that I must dismiss the Application.
143. However I commented that, given this possibility I considered that I should clarify that this decision does not preclude Türk Altin making a further application for summary judgment on the Petition if new facts emerge such that it should prove that I had been unduly sanguine about the prospect of resolutions under Article 4 providing Türk Altin with an alternative solution to a winding up.

10. THE SECOND SJ APPLICATION

144. The comments that I made at the conclusion of the First SJA Judgment have turned out to be prophetic, or perhaps a self-fulfilling prophecy, since it has indeed been the case that Türk Altin has passed further special resolutions under Article 4 and Mr Ipek is declining to follow them, with the result that Türk Altin has presented the Second SJ Application.
145. In summary Türk Altin now argues that my previous conclusion that the Article 4 regime provided an answer to what was otherwise an intolerable position of deadlock is unsustainable given the fact and nature of Mr Ipek's objections to the special

resolutions that have been passed. As the court had concluded that the current impasse (absent the use of special resolutions under Article 4) was insupportable, and it now being apparent that no version of the postulated winding up resolutions would be accepted by Mr Ipek, the court should now conclude that the conditions for a just and equitable winding-up clearly existed and should determine this on a summary basis.

146. Türk Altin's core proposition is that Article 4 has not provided an alternative solution, and there is no prospect of it doing so given the points that have been raised by Mr Ipek, at least not without extensive further litigation and/or a very messy wind-down process, even if the court were to allow Türk Altin's Part 8 claim.
147. Mr Caplan referred me in particular to the grounds on which Mr Ipek holds that he is entitled to resist the resolutions that had been passed by Türk Altin which, he points out, include arguments that would apply to any version that Türk Altin might seek to pass of the postulated wind-down resolutions that I had suggested in the First SJA Judgment might provide an answer to the deadlock that I had found there.
148. At paragraph 65L of Mr Ipek's proposed amended Points of Defence he sets out his reasons for resisting the Winding Down Special Resolution and the Capital Reduction Special Resolution as follows:

"65L. The Winding Down Special Resolution and the Capital Reduction Special Resolution are unlawful and invalid, in particular for the following reasons:

65L.1. Taken separately or together with each other and/or with the other special resolutions referred to above (principally but not only the EPA Special Resolution and the LoD Special Resolution), such resolutions constitute steps to wind up the Company without A Shareholder consent, and are thus contrary to Article 26.

65L.2. Such resolutions are contrary to the Company's best interests:

(a) The steps contemplated by the Winding Down Special Resolution would be liable to destroy or lower the value of the SAM Alaska Project and the Company's assets more generally, as well as the value of Mr Ipek's share. This is because the Winding Down Special Resolution instructs Mr Ipek to cause Koza and its wholly-owned subsidiaries to cease all Trading Activities (as defined within the Special Resolution) with immediate effect, including by entering into no new or renewed contracts, by incurring no new expenditure or liabilities, and by acquiring no new investments or assets.

(b) Although paragraphs 1.1.4 and 1.4 of the Winding Down Special Resolution permit Trading Activities to be undertaken where this is necessary to maintain the value of Koza's Projects, Projects is defined within the Special Resolution so as to exclude the SAM Alaska Project. The Special Resolution therefore

directs Mr Ipek to cause Koza to cease Trading Activities even where doing so will be detrimental to the value of the SAM Alaska Project.

(c) The steps contemplated by the Capital Reduction Special Resolution would significantly reduce the Company's cash resources and thus make it more difficult for the Company to fund the US\$12 million purchase of the NSR Licences, which are of crucial importance for the future of the SAM Alaska Project.

65L.3. Accordingly, such resolutions purport to require Mr Ipek to breach his duties to the Company under ss. 171 and/or 172 of the Companies Act 2006.

65L.4. Further or alternatively, such resolutions were not passed in good faith for the benefit of the Company, and/or amount to oppression of Mr Ipek as minority shareholder and/or are otherwise unjust and/or were passed for a collateral purpose.

65L.5. The Capital Reduction Special Resolution is contrary to the procedure for declaring dividends prescribed in Article 30 of the Model Articles which prohibits the declaration of a dividend absent a recommendation from the directors.

65L.6. Such resolutions seek and/or are liable to usurp Mr Ipek's management function and deprive his right under Article 26 to prevent his removal as director of any real effect."

149. To put this more shortly, Mr Ipek resists these resolutions because:

- i) they constitute steps towards winding up the Company without A Shareholder consent, and are thus contrary to Article 26;
- ii) they are against the Company's best interests and accordingly would cause Mr Ipek to breach his duties as a director;
- iii) they were not passed in good faith for the benefit of the Company, and/or amount to oppression of Mr Ipek as minority shareholder and/or are otherwise unjust and/or were passed for a collateral purpose;
- iv) the Capital Reduction Special Resolution is contrary to the procedure for declaring dividends prescribed in Article 30 of the Model Articles which prohibits the declaration of a dividend absent a recommendation from the directors; and
- v) Such resolutions seek and/or are liable to usurp Mr Ipek's management function and deprive his right under Article 26 to prevent his removal as director of any real effect.

150. Mr Caplan argues that Mr Ipek would seek to apply these arguments to any set of resolutions that sought to emulate the postulated wind-down resolutions. Whilst Mr

Caplan would argue that these arguments are wrong, and seeks to defend the resolutions that have been passed by Türk Altin, he makes the point that it has become clear that resolutions passed under Article 4 do not provide the ready answer to the deadlock that the court found within the First SJA Judgment. He therefore urges the court to acknowledge this and to allow a winding up on the just and equitable basis now that the solution that the court had suggested has turned out not to be available. He argues that this is the only way of preventing continued drift whilst Mr Ipek continues to challenge all and any resolutions put forward by Türk Altin that would allow Türk Altin to do what it wants: to wind down its investment and have the proceeds returned to it.

151. In principle I agree. Whilst, as I will discuss below, I disagree with many of, but not all, the grounds that Mr Ipek puts forward to resist these resolutions, it is abundantly clear that Mr Ipek is intending to defend to the utmost any resolutions that he considers will wind down the operations of the Company. Therefore the logic followed in the First SJA Judgment that there was no deadlock because Article 4 provided a way out, can no longer sensibly be applied. Subject to the arguments which I discuss further below, there clearly is, and clearly remains, a deadlock that will not be resolved except by means of a just and equitable winding up.
152. Mr Ipek has essentially three responses to this argument.
- i) The first is that, to the extent he has not accepted the special resolutions passed, this was for good reasons based on the unlawfulness of those resolutions. In this regard he has sought to reargue some points that were considered and dismissed in the First SJA Judgment.
 - ii) The second is that he has procured that various offers be made which would provide an alternative to a winding-up, in addition to his own offer to purchase Türk Altin's shares.
 - iii) The third is that he is looking to bring an action for unfair prejudice against Türk Altin, and it would be premature to wind up the company before this action is heard, and indeed that action might resolve the deadlock if he obtains the remedy he seeks an order for Türk Altin to sell its shares to him
153. I will consider these arguments below, but meanwhile I should explain the individual resolutions in question.

11. THE SPECIAL RESOLUTIONS

154. Türk Altin has passed the following special resolutions under Article 4:
155. **The EPA Resolution.** The EPA Resolution had been passed by Türk Altin on 16 August 2024. It had been passed to require the Company to complete an Equity Purchase Agreement, referred to by the parties as “**the EPA**”. The EPA is an agreement with the title “Equity Purchase Agreement” between Great American Minerals Exploration, Inc (“**GAME**”) and Türk Altin. It is dated 15 August 2024. Under the EPA, Türk Altin agrees to direct the Company to sell its interest in the SAM Alaska joint venture, alongside its equity interest in GAME itself. The purchase price for the sale is fixed at US\$30.5 million. However, the agreement goes on to provide that following closing GAME and Türk Altin will enter into what is referred to as a “Smelter

Return Royalty Agreement”. This would provide Türk Altin with a stream of royalty payments, upon the SAM Alaska project coming into production up to a total of US\$14.5million. The EPA mandated the sale of Koza Ltd’s largest asset on terms such that it was uncertain whether the initial cash consideration would come at all to Koza Ltd and it was clear that the future deferred consideration, in the form of potential future royalties would not come to Koza Ltd and would instead come directly to Türk Altin.

156. In the First SJA Judgment I considered that there were good reasons for refusing to comply with this resolution: it was difficult to see how it could be in the interests of the Company and the arrangement might also be unlawful in that it would involve an effective distribution to the shareholder that was not properly sanctioned as a lawful dividend or lawful return of capital.
157. **The Letter of Direction Resolution.** This was an attempt to overcome the objections that Mr Ipek had had to the EPA Resolution, which I had considered to be well-founded. After the hearing, Türk Altin wrote to Mr Ipek seeking to engage with him to address his concerns, and to that end proposed that Mr Ipek complete a draft letter of direction, as contemplated in the EPA, directing that the purchase price would be paid to a Koza Ltd bank account within the jurisdiction, with provisions preventing the dispersal of that money without the prior written authorisation of Türk Altin or Court order. On 26 September 2025, after it became apparent that Mr Ipek would not do this, Türk Altin passed this resolution compelling the Company to provide such a letter of direction.
158. **The Winding Down Resolution.** This resolution, passed on 17 October 2025 directed Koza Ltd to wind down its operations and those of its wholly owned US subsidiary company, Koza USA, including by selling off its inactive mining projects (other than the SAM Alaska project, which remained subject to the EPA Resolution) and limiting its expenditure, including (among other things) by not entering into any new mining projects or hiring new employees. The Winding Down Resolution is said to have been modelled on the “postulated wind-down resolutions” described in the First SJA Judgment as mentioned above.
159. **The Capital Reduction Resolution:** This also was passed on 17 October 2025, and a revised version was passed on 21 November 2025 to correct a typographical error. It directed Koza Ltd to reduce its share capital, take steps to liquidate a proportion of its fixed income investment portfolio held at Alderic Capital, and make a dividend payment to Türk Altin in the sum of £2,000,000. The Capital Reduction Resolution is said also to have been modelled on the “postulated wind-down resolutions”.
160. **The Whitehall Resolution.** On 26 August 2025, Türk Altin passed a special resolution requiring Koza Ltd to terminate its consultancy agreement with Whitehall as soon as legally possible.
161. **The 2025 Books and Records Resolution:** This resolution, passed on 17 October 2025, directed Koza Ltd to deliver up certain books and records to Türk Altin. This resolution followed a similar 2023 Books and Records Special Resolution with which Mr Ipek had not complied.
162. Mr Ipek argues that he has complied with the Whitehall Resolution and has complied insofar as he is legally able to in relation to the 2025 Books and Records Resolution. Türk Altin disputes this.

163. However, as regards the justification for a just and equitable winding up, I regard these as being something of a side issue. I do not consider that Türk Altin could obtain a just and equitable winding up on a summary basis based on non-compliance with these resolutions alone, and for that reason I do not consider it worthwhile delving into the rights and wrongs of the parties' respective arguments on these points. It is enough to note that this is another area where the parties remain at loggerheads.
164. I will however look in more detail in relation to Mr Ipek's case in relation to the EPA Resolution, the Letter of Directions Resolution, the Wind-down Resolution and the Capital Reduction Resolution (which I will refer to collectively as the "**Winding-Down Resolutions**") as between them these resolutions were intended to bring about something like the postulated wind down resolutions that I considered in the First SJA Judgment to provide a workable alternative to a just and equitable winding up.

12. LEGAL ISSUES RELATING TO THE RESOLUTIONS

165. Before I turn to considering the lawfulness of the individual resolutions in question, I will consider the legal general arguments put forward by Mr Ipek's counsel as to the circumstances where a resolution passed unanimously by all shareholders entitled to vote may, nevertheless, be invalid or properly resisted by the directors of the company.

(a) Arguments considered in the First SJA Judgment

166. As I have noted, this question was considered in the First SJA Judgment. I had put the postulated wind-down resolutions to Mr Sheehan to see if he agreed that this was a possible solution outcome, if Türk Altin wished to deal with things this way. He had been unwilling to concede that it was necessarily within the powers of a shareholder resolution. He regarded the interplay of shareholder powers and director powers to be a complex one. Whilst the starting point was that shareholders have a power under Article 4 to give directors instructions, and that directors have a duty to comply with those instructions, he considered that it is difficult to say how such a duty interacts with directors' other duties and with shareholders' duties.
167. Mr Sheehan on that occasion was making two arguments, one based on directors' duties and one based on the limitation on shareholders' powers to pass resolutions.

The argument based on directors' duties

168. The first was based on principles discussed in the decision in *Hikari Miso v Knibbs* [2023] EWHC 1340 (Ch) at [132]-[133] ("**Hikari Miso**"). This case did not concern a shareholder direction under Article 4 (or any similar article), but rather considered the effect of a shareholders' resolution under a shareholders' agreement providing approval to something that was a matter reserved to shareholders under that agreement. Mr Sheehan drew my attention to that judgment at [154] where the judge said:

"154. I accept that the good faith and conflicts duties cannot be abrogated entirely: they form part of the irreducible core of a fiduciary's duties to his principal. However, the scope of their operation can be limited, sometimes dramatically so."

169. The point being made here was that, where shareholders limit the scope of operation of the company (for example requiring it only to invest in certain areas), this affects the fiduciary duties of a director to act in good faith in the interests of the principal requiring the director to pursuing actions only within the scope permitted. Obviously, it would be a breach of duty for the fiduciary to act outside that scope. Equally obviously, a director would still have fiduciary duties within that scope.
170. Mr Sheehan was asking me to extrapolate from this decision a principle that would apply in the different circumstances of a direction given under Article 4, to say that even in the case of such a direction the directors are not absolved from their fiduciary duties, and therefore could refuse to obey that direction if they considered that the direction clashed with their fiduciary duties to their company.
171. Mr Sheehan developed his point by reference to *Re Southern Counties Fresh Foods Ltd* [2008] EWHC 2810 (Ch) (“*Re Southern*”) where, at [64], Warren J, in the context of considering the position of a nominee director representing one of the shareholders, agreed that the duties of directors could be attenuated by unanimous agreement of the shareholders but considered that:
- “The extent to which the shareholders could effectively agree that a particular nominee director could act in a way which he, and the rest of the board, saw to be positively against the interests of the company must be open to question”;
- and, at [67](e)
- “... it is doubtful whether, as a matter of English law, it is possible to release a director from his general duty to act in the best interests of the company”;
172. However I note that [67](g) Warren J went on to say:
- “... I see no reason in principle why in relation to specific areas of interest, a director should not be released from his fiduciary duty to give his best independent judgment to the company”;
- and at [68]:
- “But whatever can be said as a matter of generality, I consider that the extent of the duties of a director in such a situation are very much fact-specific. The general duty is clear; the difficult question is the extent to which the duty is qualified. That qualification will depend critically on the context of the relationship and the particular action which is said to constitute a breach of duty.”
173. Mr Sheehan has further argued this point by reference to guidance issued by the Department for Business Innovation and Skills in 2009. This states in terms that the reserve power in Article 4:

“does not give shareholders or members carte blanche. Directors are not compelled to comply with such directions where they involve them doing something which is unlawful or contrary to their general duties as directors.”

174. I doubt that this document has the status of an authoritative guide to interpretation (and Mr Sheehan acknowledged as much). Even to the extent that it may, as I noted in the First SJA Judgment, the reference in that guidance to “general duties” must be taken as their general duties as attenuated or modified by the resolution given and, in view of the case law I considered in the First SJA Judgment, cannot be taken as any suggestion that the director can use his own opinion as to what is in the interests of the company to trump a direction under Article 4, particularly where that direction is given by 100% of the shareholders with voting and material economic rights.

The argument based on limitations on shareholders’ powers

175. In the context of the question of whether it might be proper for Mr Ipek to resist implementing a shareholders’ resolution under Article 4, Mr Sheehan at the previous hearing also drew my attention to a line of jurisprudence which set bounds on the proper scope of a shareholders’ resolution.
176. He argued first, that there was a general principle about whether a power was being exercised in good faith in the interests of the Company as an entity.
177. In relation to this proposition he took me to *Re Charterhouse Capital Ltd* [2014] EWHC 1410 (Ch) (“**Charterhouse**”), an unfair prejudice case dealing with a contested amendment to the articles of association, and in particular to the dicta of Asplin J at [230]-[231] which were later considered by the Court of Appeal in *Re Charterhouse Capital Ltd* [2015] EWCA Civ 536; [2015] B.C.C. 574 (“**Charterhouse CA**”). He drew my attention to the judgment of Sir Terence Etherton C (as he then was) at [90] where he summarised certain principles, as follows (omitting case references):

“(1) The limitations on the exercise of the power to amend a company’s articles arise because, as in the case of all powers, the manner of their exercise is constrained by the purpose of the power and because the framers of the power of a majority to bind a minority will not, in the absence of clear words, have intended the power to be completely without limitation. These principles may be characterised as principles of law and equity or as implied terms.

(2) A power to amend will be validly exercised if it is exercised in good faith in the interests of the company.

(3) It is for the shareholders, and not the court, to say whether an alteration of the articles is for the benefit of the company, but it will not be for the benefit of the company if no reasonable person would consider it to be such.

(4) The view of shareholders acting in good faith that a proposed alteration of the articles is for the benefit of the company, and

which cannot be said to be a view which no reasonable person could hold, is not impugned by the fact that one or more of the shareholders was actually acting under some mistake of fact or lack of knowledge or understanding. In other words, the court will not investigate the quality of the subjective views of such shareholders.

(5) The mere fact that the amendment adversely affects, and even if it is intended adversely to affect, one or more minority shareholders and benefit others does not, of itself, invalidate the amendment if the amendment is made in good faith in the interests of the company

(6) A power to amend will also be validly exercised, even though the amendment is not for the benefit of the company because it relates to a matter in which the company as an entity has no interest but rather is only for the benefit of shareholders as such or some of them, provided that the amendment does not amount to oppression of the minority or is otherwise unjust or is outside the scope of the power.

(7) The burden is on the person impugning the validity of the amendment of the articles to satisfy the court that there are grounds for doing so.”

178. Mr Sheehan had argued accordingly that there are two types of prohibited resolution:

- i) Resolutions affecting the company. Here shareholders generally are to be accepted as being the arbiters of the interests of the company, but not where the resolution is one which no reasonable person would consider to be the interests of the company. In the case of such resolutions, even if the alteration affects minority shareholders, it is not invalidated if it is made in good faith in the interests of the company; and
- ii) Resolutions not affecting the company but adversely affecting a minority of shareholders. In this case, whether the resolution is valid will turn on whether it amounts to oppression of the minority, is unjust or outside the scope of the power.

179. Mr Sheehan was drawing my attention to these principles mainly to establish the following arguments (which I summarise in broad terms):

- i) that Mr Ipek was not being unreasonable in resisting the resolution to enter into the EPA, firstly on the grounds that no reasonable person could consider this resolution to be in the interests of the Company because the EPA involved selling the Company’s most important asset where all or at least a potentially major part of the consideration would not be received by the Company; and secondly because this resolution affected the value of Mr Ipek’s share; and
- ii) that Mr Ipek was not being unreasonable in resisting the resolution to provide information (i) because this was at least in part unlawful (in requiring the

disclosure of privileged documents in the context where litigation was outstanding) (ii) as it was a prelude to the unlawful sale under the EPA and therefore fell into the first type of unlawful resolution or (iii) because it fell into the second type of unlawful resolution as it was aimed at finding ways of oppressing Mr Ipek.

180. In arguing this point, Mr Sheehan noted that the EPA mandated the sale of Koza Ltd's largest asset on terms such that it was uncertain whether the initial cash consideration would come at all to Koza Ltd and it was clear that the future deferred consideration, in the form of potential future royalties, would not come to Koza Ltd and would instead come directly to Türk Altin.
181. In the First SJA Judgment I noted Mr Sheehan's arguments but was careful to say that the First SJA Judgment could not be regarded as a judicial determination of the validity of such resolutions as the postulated wind-down resolutions. That matter would need to be determined on the facts.
182. However, I considered that this analysis did suffice to allow me to reach a conclusion that, after Mr Ipek had undertaken not to pursue his Authority Claim in the English courts, there remained at the very least a realistic, and definitely more than fanciful, chance that Mr Ipek could argue that there is no deadlock that could not be resolved by a lawful direction being given under Article 4, and therefore that the Claimant would be unable to establish the central plank of their argument justifying a just and equitable winding up.

(b) *The Arguments as developed in this hearing*

183. Mr Sheehan has now developed further the arguments that were given some consideration in the First SJA Judgment.

The Argument based on powers being reserved to directors

184. First, he invites me to consider a principle enunciated in *Breckland Group Holdings Ltd v London and Suffolk Properties Ltd* [1988] 4 B.C.C. 542 ("**Breckland**") at page 547.
185. This addressed what was the then regulation 80 in the Table A Model articles, which generally placed the management of the company ("**London & Suffolk**") in the hands of its board of directors, but permitted shareholders to prescribe regulations in general meeting. Harman J found that shareholders may not, by resolution, interfere with matters that a company's articles reserved to its directors.
186. The relevant matter in that case was the proposed ratification of the institution of legal proceedings. Legal proceedings had been undertaken in the name of London & Suffolk against parties associated with the 49% shareholder. They had been instituted at the instance of the principal shareholder in the company which held a 51% majority share in London & Suffolk. This clearly did not constitute authority for London & Suffolk to commence these proceedings, but it was proposed before the court that the company which held a 51% majority share could cure that defect by directing the board of directors to ratify the legal proceedings.

187. I am loath to apply this principle too widely. Harman J (as he states on page 545) regarded this as being:

“a “difficult point of law with which I am faced at 4.20 on a Friday evening”.

188. His reasoning for not allowing a majority of the shareholders to pass a resolution in that case was firmly based on the specific articles of association governing the company which expressly placed within the remit of the board the question of taking legal action. Part of his reasoning, by reference to earlier decided cases, was that such a resolution (which, it was proposed, would be passed as an ordinary resolution) could not alter the effect of the articles or affect the bargain made between shareholders that the directors should have conduct of such a matter.

189. Mr Sheehan has noted that there does not appear to be any authority which grapples with the extent of this reg. 80 permission and its interplay with directors’ duties under the Model Articles. However, this ignores the fact that Article 4 of the Model Articles adopted by the Company is not dealing with ordinary resolutions: it is dealing with special resolutions. It provides:

“4. (1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.”

190. Shareholders in this case must therefore have accepted that a special resolution could direct the directors to take, or refrain from taking, any specified action. They cannot claim there has been a breach of the bargain that is expressed in the Company’s articles if this happens.

191. There is in the case of the Company an exception. This would apply if, as a result of Article 26, the resolution was one which the ordinary shareholders could not pass. Mr Ipek argues that this exception applies to some of the resolutions that Türk Altin has passed, or purported to pass, but for reasons that I will discuss below, I do not agree.

192. Directors no doubt would also be absolved from complying with an instruction that was unlawful or a fraud, (such as a direction to approve statutory accounts that are known to be false) or where complying with the instruction would result in insolvency, and thereby engaging a duty to consider the position of creditors.

193. However, outside these exceptions, I conclude that the mere fact that certain actions, such as approving a dividend, are reserved to directors, does not prevent Article 4 from directing a director from undertaking that act, or, in the absence of special circumstances (such as the direction being unlawful or a fraud, such as a direction to approve statutory accounts that are known to be false), absolve the director from complying with that instruction. The reasoning in *Breckland* does not apply.

The Argument based on directors' statutory duties

194. As a separate argument, Mr Ipek's counsel points out that under s.172 Companies Act 2006 ("CA 2006"), directors must act in a way that they consider:

"would be most likely to promote the success of the company for the benefits of its members as a whole".

195. Mr Sheehan again draws my attention to in *Re Southern* (discussed at [171] to [174] above where Warren J accepted that shareholders can, through unanimous agreement, qualify or attenuate a director's fiduciary duties but "attenuation does not mean complete abrogation" (see: *Re Southern* at [64]) and where at [67(e)] it was said to be "doubtful" whether shareholders can, by special resolution,

"release a director from his general duty to act in the best interests of the company".

196. Mr Ipek's counsel argue that *Re Southern* at [68] adds another important qualification in the present summary judgment context, namely that the "difficult question" about the extent of permissible relaxation of a director's duties

"will depend critically on the context of the relationship and the particular action which is said to constitute a breach of duty"

and that is all

"very much fact-specific" [68].

197. The specific facts in *Re Southern* related to a general agreement between the shareholders that a director or directors appointed by one of the shareholders would be entitled to take account of the interests of that director's appointor. Warren J considered that that agreement was fine as far as it went (for example relieving the director of his duty not to have a conflict of interests) but this did not excuse the director if the director were to take a decision in the interests of his appointor for that was against the interests of the company of which he was a director.

198. These are very different facts to the facts in the current case where the holders of all the shares with voting rights, or rights to dividend, or rights on a winding up (beyond return of the original subscription price of the A ordinary share) approve a specific action and mandate the director of the Company to bring that about.

199. As I have mentioned, in *Hikari Miso*, the court dismissed an argument that directors' duties overrode the right of a shareholder under a shareholders' agreement to veto a particular act. In effect, the court held (at [115]) that the exercise of the veto took away the power of the company and its directors to act. But the court cautioned that this "does not give shareholder-directors completely free rein to act contrary to the company's interests and in breach of their duties" because (as was said at [119]:

"[w]ithin the scope of the reserved matters limits as set down, these duties continue to apply with full force": [119].

200. Mr Ipek's counsel regard it as important that the court was also at pains to point out at [164] that it was not dealing with a "special resolution of the shareholders directing the directors to take certain action", but "merely an absence of permission", and suggest that Türk Altin's resolutions, which in contrast, are "direction[s] to directors" are more prone to engage the restrictions described in *Re Southern*.
201. Again, this, I consider is to misunderstand the point that was being made in *Hikari Miso* at [164]. The point being made there was that a mere permission from shareholders to do something did not absolve the directors from acting within the scope of that permission in what they considered to be the interests of the company. By contrast a direction from shareholders along the lines of that allowed by Article 4 would absolve the directors from having to consider the best interests of the company in deciding whether to undertake that action, although they still might have duties in relation to how that action was undertaken, within the scope of the direction.

The argument based shareholder duties

202. Again Mr Sheehan put forward the arguments he had made previously regarding the duties of shareholders in passing a resolution summarised at [178] above.
203. At one point in his oral submissions, he seemed to wish to make a distinction between the duties of an individual shareholder joining in a vote at a meeting and the position of a 100% shareholder passing a written resolution. I could not understand the basis for that distinction, and I dismiss it.
204. Mr Sheehan referred me to some further case law to reinforce his analysis of shareholder duties in passing a resolution.
205. He referred to *Citco Banking Corp NV v Pusser's Ltd* [2007] Bus LR 960 (PC) ("*Citco*"). This was a case involving amendments to articles of association of a British Virgin Islands company and a conversion of shares into a different class which together would have the effect of changing the control of the company in favour of the company's chairman, Mr Tobias.
206. The Privy Council upheld the resolution finding that although section 89 of the British Virgin Islands Companies Act contained no qualification of the power of a 75% majority to amend the articles of association, the courts had always treated the power as subject to implied limitations; that the test of whether the amendment was *bona fide* for the benefit of the company as a whole was whether there was any reasonable ground for the decision, even when the amendment operated to the particular advantage of a minority of the shareholders; that the burden of proof was on the party who challenged the validity of the amendment; that if Mr Tobias *bona fide* considered that the amendment was in the interest of the company as a whole and there was no attack on his *bona fides*, he was free to exercise his votes in his own interest; but that even if Mr Tobias had not cast the votes of the 28% of the issued share capital in his control in favour of the resolutions, the majority would still have been 78%; and that, accordingly, the Court of Appeal was right to hold that the resolutions were valid.
207. Lord Hoffman considered the law at [12] onwards, considering in particular the Court of Appeal's decision in *Allen v Gold Reefs of West Africa Ltd* [1900] 1Ch 656, where the court found valid a proposed amendment to the articles of a company which

extended the lien that originally was only over to a pre-paid shares to apply also to fully pay shares, disadvantaging only one shareholder. At [13] Lord Hoffman noted that in a well-known passage Lindley MR had said, at pp 671—672:

“The power ... Conferred on companies” -by the equivalent of section 89 of the BVI Companies Act – “to alter the regulations contained in their articles is limited only by the provisions contained in the statute and the conditions contained in the company memorandum of association. Wide, however, as the language of section [89] is, the power conferred by it must, like all other powers, be exercised subject to those general principles of law and equity which are applicable to all powers conferred on majorities and enabling them to bind minorities. It must be exercised, not only in the manner required by law, but also bona fide for the benefit of the company as a whole, and it must not be exceeded. These conditions are always implied, and are seldom, if ever, expressed. But if they are complied with I can discover no ground for judicially putting any other restrictions on the power conferred by the section than those contained in it.”

208. Lord Hoffman clarified that these considerations arose in cases where an amendment to an article operated to the particular disadvantage of a minority of shareholders and also when an amendment operates to the particular advantage of some shareholders. (see at [17]).
209. He clarified also at [15] and [16] (based on *Shuttleworth v Cox Bros and Co (Maidenhead) Ltd* [1927] 2 KB 9 (“*Shuttleworth*”)) that the test is not whether merely whether the shareholders *bona fide* or honestly believed that the alteration was for the benefit of the company. Neither was it whether in fact (i.e. as determined by the judge) that the alteration is genuinely for the benefit of the company – it was not the business of the court to manage the affairs of the company. Rather, the amendment could not stand if it is such that no reasonable person could consider it for the benefit of the company.
210. Mr Sheehan also drew my attention to the judgment at [18] which considered the position of amendments regulating the rights of shareholders in matters in which the company as a corporate entity has no interest, such as the distribution of dividends or capital or the power to dispose of shares. Lord Hoffman referred to the need for another test in such cases. He noted that in *Greenhalgh v Arderne Cinemas Ltd* [1951] Ch 286, where the amendment was to remove a pre-emption clause to facilitate a sale of control to a third party, Sir Raymond Evershed MR tried to preserve the application of the traditional test by saying, at p 291, that in such cases “the company as a whole” did not mean the company as a corporate entity but “the corporators as a general body” and that it was necessary to ask whether the amendment was, in the honest opinion of those who voted in favour, for the benefit of a hypothetical member. However, Lord Hoffmann did not specifically endorse this approach, merely noting that some commentators have not found it “entirely illuminating” and that it was not necessary to resolve this for the purpose of that appeal.

211. The next case that Mr Sheehan took me to was *Charterhouse* at first instance (*Re Charterhouse Capital Ltd* [2014] EWHC 1410 (Ch)), where Aspen J applied *Citco* and *Shuttleworth* and at [335] said:

“What is the test to be applied in relation to the alteration of the articles themselves? It seems to me that the changes to the articles in this case fall into the first category identified in *Citco*. In other words, the *Allen v Gold Reefs* test applies. Was the power to change the articles exercised honestly in the best interests of the company as a whole and are there grounds upon which reasonable men could have come to the same decision?

212. Mr Sheehan then took me back to [90] in the Court of Appeal decision in *Charterhouse*, which I have reproduced at [175] above.

213. Mr Sheehan also referred me to *Tianrui (International) Holding Company v China Shanshui Cement Group Ltd* [2024] UKPC 36 [2025] AC 709 at [81]-[82] (“*Tianrui*”), as an example where shareholders were constrained in a matter not relating to amendments to the articles. This Privy Council case involved considering the potential effect of the ratification by majority shareholders of an issue by the directors of bonds and shares, alleged to be an improper use of powers for the improper purpose of diluting the shares held by the minority to below 25%, so that the minority shareholder would no longer be able to block a special resolution. At [81]-[82] it was found that the shareholders power to act by majority could not be exercised where this was done to oppress the dissenting minority.

Arguments made on behalf of Türk Altın

214. At the latest hearing, Mr Caplan argued for a different analysis of shareholder and director duties than that expounded by Mr Sheehan as summarised above. Mr Caplan argued for five propositions:

- i) First, the general proposition that a shareholder is entitled to vote its shares in general in its own interests;
- ii) Secondly, there generally is no “best interests of the company test” - only a control mechanism that is based on minority oppression;
- iii) Thirdly, that where the best interest considerations do come into play, it is for the shareholders and not the court to come to the view that the amendment is in the best interests of the company;
- iv) Fourthly, that if a resolution is challenged on the grounds of minority oppression, and that challenge succeeds, the resolution will not be valid; and
- v) Fifthly, that if a special resolution is valid, a director must comply with it, and cannot be in breach of fiduciary duty for doing so.

215. Mr Caplan found authority for his first and second propositions in the Supreme Court case of *Eclairs Group Ltd v JKX Oil & Gas Plc* 2015] UKSC 71, [2016] 1 BCLC 1, (“*Eclairs*”). He quoted Lord Sumption at [40]:

“Directors owe a duty of loyalty to the company, but shareholders owe no loyalty either to the company or its board. Within broad limits, derived for the most part from Pt 30 of the 2006 Act (Protection of Members against Unfair Prejudice) and the City Code on Takeovers and Mergers, they are entitled to exercise their rights in their own interest as they see it and to challenge the existing management for good reasons or bad.”

216. To expand Mr Caplan’s second proposition, it is that there is no freestanding best interests of the company test when it comes to special resolutions of the kind concerned in this case, only a control mechanism that is based on minority oppression, or in the language used by some of the authorities, whether a resolution is unfairly discriminatory. The control mechanism is not whether a resolution is in the best interests of the company. The only situation in which a best interest test comes in is where a majority is intending to alter the legal rights of a minority. In that situation (but only in that situation), the rule is that even if a resolution is discriminatory and operates to the disadvantage of a minority, it can nonetheless be valid if those voting for it believed that it was in the interests of the company.

217. In support of this argument, Mr Caplan refers to the judgment of Snowden LJ in *Re Compound Photonics Group Ltd* [2022] EWCA Civ 1371 at [199] (“**Compound Photonics**”) to the effect that there is no:

“ ... general requirement that shareholders should take into account the interests of other shareholders when deciding how to vote. Rather, the long-standing rule is that the votes attaching to shares are proprietary rights that the holder may exercise as they see fit in their own interests”

and at [200]:

“It is also the case that the votes of shareholders do not ordinarily have the result of depriving other shareholders of the benefit of the statutory contract – i.e. their shares. That is certainly the case where the vote is simply to remove a director from office. But even if a resolution is proposed which might be thought to operate to the disadvantage of the minority, e.g. to alter the articles to give the board the power to remove a permanent director, the test applied by the court to determine the validity of the resolution is simply whether those voting in favour honestly believed that it was for the benefit of the company”.

218. In support of his third proposition, that where the best interest considerations do come into play, it is for the shareholders and not the court to come to the view that the amendment is in the best interests of the company, Mr Caplan cites *Charterhouse* at [90(3) and (4)], which I have reproduced at [177] above, as well as to Lord Reed in *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [2024] AC 211(SC) at [47]:

“So long as a company is financially stable, and is therefore able to pay its creditors in a timely manner, the interests of its shareholders as a whole, understood as a continuing body, can

be treated as the company's interests for the purposes of the directors' duty to act in its interests. It is the shareholders whose interests are affected by fluctuations in its profits and reserves, as they are the persons entitled to share in its distributions and its surplus assets."

219. In support of his fourth proposition, that if a resolution is challenged on the grounds of minority oppression, and that challenge succeeds, the resolution will not be valid Mr Caplan again cites *Charterhouse* at [90]:

"It is common ground that an alteration to a company's articles, even if passed by the requisite majority of shareholders, may be challenged as invalid in certain circumstances."

220. In support of his fifth proposition, that if a special resolution is valid, a director must comply with it, Mr Caplan again cites the judgment of Snowden LJ in *Compound Photonics*, this time at [286] where in relation to (for example) the shareholders in general meeting of the company decide, pursuant to a provision such as Regulation 70, to pass a special resolution to give a direction or instruction to the board to act in a certain way he said:

"A director who disobeyed such an instruction or decision would be acting in contravention of his section 171 duty."

221. Mr Caplan also cites *Hikari Miso* at [157]-[160]. At [157(iv)] counsel for the defendants in that case put forward a submission that if shareholders vetoed a reserved matter but the board considered it would be in the interests of the company to pursue that vetoed endeavour, the board may pursue the venture on the basis of their directors' duties to act in good faith in the interests of the company. At [160]-[164] the Judge (Sarah Worthington DBE KC) roundly rejected this proposition as a misconception of the law on directors' duties, pointing out that directors must act within the scope of their powers. Whilst this case was dealing with a veto, rather than a positive direction to do something, I agree with Mr Caplan that the principle is the same (provided that the resolution is otherwise a valid one).

222. Mr Caplan also referred me again to *Sequana*, where Lord Reed said at [23]:

"It has long been established that a company is normally bound in a matter which is intra vires the company by a resolution of the shareholders in general meeting. Authorisation in advance of the directors' act or ratification after the event by the shareholders in general meeting, after full disclosure, results in the treatment of the directors' act as the act of the company, on principles of the law of agency, and therefore eliminates the possibility of the company bringing a claim against the directors for breach of their duties to the company."

223. I will also mention an argument that Mr Caplan made during the hearing of the First SJ Application. He referred to *Hiraki Miso* at [132]-[133] of, which in turn refers to the judgment of Snowden LJ in *Compound Photonics*. This establishes a proposition that the courts recognise a distinction between a shareholders' vote altering the *legal rights*

of other classes of shareholder and the *value of* rights of shareholders. As the judge in *Hikari Miso*, Sarah Worthington DBE KC(Hon) sitting as a Deputy High Court Judge put it (at [132]):

“This is because in none of these cases is the shareholder’s vote altering the *legal rights* of all shareholders, including the dissenting shareholders. It is irrelevant that, in these latter examples, the vote may alter the *value* of the rights [of] shareholders. That is an incident of almost every corporate activity.”

224. Mr Ipek’s counsel argue that is based on a misreading of *Compound Photonics*: properly interpreted that case drew no distinction between resolutions affecting rights and those affecting the value of rights: such a distinction is also incompatible with *Charterhouse* at [90(5)] and *Citco*, both of which indicate that general concepts of prejudice to minority shareholder interests are relevant to the validity of resolutions. To a large extent I agree. However I note that the question of minority oppression has to be read in the context of the constitution of the relevant company and any agreements between shareholders. Where there is a change to the articles that disadvantages a particular shareholder or group of shareholders, that is more likely to be seen as unfair than a resolution which operates in accordance with the original constitution of the company and which is not in breach of any agreement or understanding between shareholders and is not to be regarded as a quasi-partnership company where other equitable considerations may apply.

(c) *Principles emerging from the arguments*

225. Having considered the arguments raised on both sides as to the applicable law, I find myself more in agreement with Mr Caplan than with Mr Sheehan. I note that the cases that have been cited by Mr Sheehan generally relate to amendments to the articles (sometimes coupled with issues of shares or conversion of shares into shares of another class). Whilst I agree that there may be other circumstances where similar considerations arise, it is interesting that neither side has found be any example that has arisen in the case law so far. It is necessary to be cautious in extending principles developed in relation to amendments to the articles (which clearly of their nature involve changes to the contract between different shareholders, as well as between shareholders and the company) and resolutions relating to pure business decisions for the company, such as whether and where to spend its money and what business to pursue or whether to sell its assets.
226. I agree with Mr Caplan’s point that the case-law here is best explained as dealing with the position where a majority of shareholders impose a change on the minority, and is to be seen through the lens of unfair prejudice or oppression of the minority.
227. I would synthesise the arguments that have been put to me as follows:
- i) First, as a general rule a shareholder is entitled to vote its shares in its own interests *Eclairs* [40];
 - ii) Secondly, there generally is no “best interests test” *Compound Photonics* at [199]– however there is a control mechanism that is based on minority

oppression (or illegality); *Compound Photonics* at [199]; *Tianrui* at [81], *Charterhouse* at [90(5)];

- iii) Thirdly, the majority of shareholders may not pass a resolution either to the specific detriment of another body of shareholders or to the specific advantage of the majority (*Citco* at [17]) except where justified by reference to the interests of the company as a whole. Such a justification is in the first place a matter for the shareholders (and not one for the court to determine) but the court will not accept such a justification if the resolution is such that that no reasonable person could consider it for the benefit of the company (*Citco* at [15]-[16]);
 - iv) Fourthly, that if a resolution is challenged on the grounds of minority oppression, and that challenge succeeds, the resolution will not be valid (*Charterhouse* at [90]);
 - v) Fifthly that if a special resolution is valid, a director must comply with it, and cannot be in breach of fiduciary duty for doing so (*Compound Photonics* at [286]; *Hikari Miso* at [160]-[164]; *Sequana* at [23]);
 - vi) Sixthly, that a change to the articles that disadvantages a particular shareholder or group of shareholders, is more likely to be seen as unfair than a resolution which operates in accordance with the original constitution of the company (as per the reasoning at [224] above).
228. With these general principles in mind, I turn to consider the Winding-Down Resolutions passed by Türk Altın.

13. THE LEGALITY OF THE WINDING-DOWN RESOLUTIONS

(a) *The EPA Resolution and the Letter of Directions Resolution*

229. First, I think it is obvious that the EPA Resolution and the Letter of Directions Resolution need to be taken together. I will refer to them together as the “**EPA Resolutions**”. Mr Ipek objects to these resolutions on the basis that they are not in the interests of the Company and may be unlawful.
230. This is essentially a reprise of the arguments which I considered and agreed with in the First SJA Judgment, although there are some different facts.
231. At the time of the SJA Judgment it was unclear whether any of the consideration payable for the sale of the Company’s interests in the SAM Alaska project would accrue to the Company. The point of the Letter of Directions Resolution was to clarify that the Company would obtain the initial consideration due under the EPA (US\$30.5 million). However, it remains the case that if the EPA is completed and in accordance with its terms the Company would not benefit from the royalty payments being provided to Türk Altın under the EPA. Therefore there is still a good argument that that payment of future royalties is a diversion of consideration that ought to have been due to the Company.
232. Mr Ipek argues that this is a poor deal for the Company. The Company would receive only US\$30.5 million for interests which had been valued in an independent valuation

provided by SRK Consulting Canada Inc in 2022 at between US\$60 million and US\$112 million. The total valuation also was less than that given in the alternative offers that he had procured.

233. Further, if Türk Altin is receiving a royalty stream of up to US\$14.5 million out of the same deal, it was obvious that value was being extracted from the Company. Further such an extraction of value was potentially unlawful as an unsanctioned dividend or return of capital. Mr Ipek also has doubts about the financial ability of GAME to pay the initial consideration or to bring the project to profitability so that the royalties or any of them will be paid. He notes that the original arrangements with GAME included a warrant arrangement which dealt with the possibility that GAME might fail to pay the sum of US\$12 million necessary to preserve the mining licences. The warrant arrangements allowed the Company to step in to make this payment if necessary, and then in return to receive a larger portion of the equity in the project.
234. In answer to the points concerning the commerciality of the arrangements, Türk Altin's argument was that as the sole owner with material economic rights it was for it, rather than Mr Ipek, to decide whether an Article 4 direction provided the best commercial answer. This, I consider to be a fair response and in line with the jurisprudence I have referred to above, and in particular the dicta of Sir Terence Etherton C in *Charterhouse CA* referred to at [177] above, and those of Lord Sumption in *Eclairs*, referred to at [215] above. Türk Altin as the owner of all material economic rights in the company was entitled to reflect its own view of whether any particular proposed sale was a good deal. Certainly it is not for the court to seek to impose its own view on what is the best commercial deal for the Company.
235. It is argued on behalf of Mr Ipek that because his A ordinary share may have a commercial value in excess of its par value given the control rights attached to this share, and its value to him in allowing him to award himself directors' fees it is wrong to regard Türk Altin as the owner of all the material economic rights. I disagree. In accordance with *Hikari Miso* as referred to at [223] above it is relevant that the Winding-Down Resolutions have no effect on Mr Ipek's legal rights. As I argue at [224] above, this is not to say that the fact that they may affect the sale value of the A ordinary share must automatically be ruled irrelevant, but the fact that Mr Ipek's legal rights are unaffected is relevant to any assessment of minority oppression. It is difficult to see how it is oppressive to Mr Ipek for the Company to wind down its operations and distribute its assets to the shareholders entitled to them as he would never be entitled to a distribution beyond the capital.
236. Essentially the allegation of unfairness rests on their being a duty on the ordinary shareholders to retain the current level of business and assets of the Company, or at least not to take any deliberate steps to reduce them. Such a duty cannot be seen from the Company's articles and could only derive from an understanding that there was some agreement or understanding between shareholders that the Company must seek to maintain its business at something like the current level in order to maintain the saleable value of Mr Ipek's A ordinary share and allow him to continue to enjoy substantial director's fees. I dismiss this argument insofar as it is based on an interpretation of Article 26 as I discuss further below, and I see nothing else that could support this argument.

237. In answer to the points concerning the extraction of value from the Company, it was suggested on behalf of Türk Altın that the royalty stream was not part of the consideration for the sale, that the consideration was stated in the EPA only to be the initial payment of US\$30.5 million. It is argued that the Company does not currently have any royalty entitlements, so the royalty arrangement under the EPA does not constitute a diversion of any entitlement on its part.
238. I consider these latter arguments to be arguments of form over substance and to be lacking reality. No alternative reason for the payment of these royalties has been proposed. The royalties were patently agreed as part of the bargain negotiated between Türk Altın and GAME for the sale of the Company's rights in the SAM Alaska Project and on any sensible view they do amount to a diversion of consideration that ought properly accrue to the Company. This argument does not therefore answer the points made at [233] above.
239. Türk Altın has also suggested that the royalties are irrelevant because the Company will be wound up before the SAM Alaska Project becomes profitable and the royalties fall due to be paid. I see no merit in that argument: if the Company received the initial payment, absent the need for a just and equitable winding up, there is no financial need for the Company to be wound up, and it would be obvious that, if the Company had a good prospect of receiving a stream of royalties worth up to US\$14.5 million, it should be kept alive.
240. Therefore, taking these two resolutions as they stand I do not accept Mr Ipek's arguments based on lack of commerciality or minority oppression. However Mr Ipek's concerns about their lawfulness are, as things stand at present, justified by reference to the illegality of an unsanctioned distribution.
241. This finding, however, this must be put in the context that the extraction of value point has little commercial importance when the person receiving the value extracted, Türk Altın, was anyway the person entitled to all the income and capital of the Company (beyond Mr Ipek's right to receive a return of capital of £1).
242. Further, as regards illegality, Türk Altın has made the point that, as the 100% holder of the ordinary shares in the Company it could find some way of dealing with any element of unlawful distribution involved in the EPA Resolutions, and therefore the lawfulness concerns were a mere technicality. After the hearing Türk Altın confirmed an offer to pass resolutions to approve any element of distribution that might be involved as a result of the EPA Resolutions.
243. Mr Ipek suggests that there may be difficulties in doing so, pointing out that Türk Altın is not proposing to compel the distribution of the Company's interest in the SAM Alaska project in specie, but instead seeks the distribution of the royalty rights that are due to it under the EPA, but these are rights which do not belong to the Company and never have done so. Therefore, they cannot logically be distributed by it.
244. I do not regard this as an insuperable objection, and consider that Türk Altın would be able to deal with this point. For example it could declare that it holds these royalty rights on trust for the Company (before then mandating distribution in specie of that beneficial interest). Alternatively it might agree with GAME that these rights be assigned to the Company pending such a distribution.

245. I therefore find that Mr Ipek cannot be criticised for failing to implement the EPA Resolutions as they stand on the grounds of their unlawfulness. However, this is not to say however that it follows that a winding up on just and equitable grounds is not justified. Had there been goodwill and cooperation between the parties this point could easily have been resolved. The offer that has been made by Türk Altin to approve a distribution of any value arising from the sale of the terms of the EPA could be made to overcome the concern regarding a possible unlawful dividend or distribution.
246. While we are discussing the EPA, I should mention that Mr Sheehan put forward arguments that the EPA might be unenforceable, or Türk Altin might be in breach of it, in the event of a winding-up of the Company, and that in those circumstances GAME would be in a position to force the liquidator of the Company to accept a much worse deal. Generally, he argues that a winding-up would have disastrous consequences. The Company is not a trading business which can be sold to any willing purchaser, nor an asset-holding vehicle which can just sell its assets through a liquidator without any real impact on their value. The Company's value depends on Koza Ltd itself remaining in existence, so that it may exploit the rights which it holds in the SAM Alaska Project. All of this would be thwarted by a winding-up.
247. If there are risks in Türk Altin's preferred approach of a just and equitable winding up, they are risks that fall squarely on Türk Altin as the only person that will receive any material distribution on a winding up. No doubt Türk Altin will have taken this into account in determining that it would prefer a just and equitable winding-up to the current arrangements.

(b) *The Wind-down Resolution and the Capital Reduction Resolution*

248. The Wind-down Resolution instructs Mr Ipek to cause the Company and its subsidiaries to cease all business, terminate all contracts, and seek a buyer for Koza Ltd's assets other than the SAM Alaska Project (the "**Non-Core Assets**"). Türk Altin has confirmed that Mr Ipek was not instructed to seek a buyer for the SAM Alaska Project because it intends for that asset to be sold to GAME under the EPA. The Capital Reduction Resolution supplements this with an instruction for the Company to reduce its share capital, take steps to liquidate a proportion of its fixed income investment portfolio, and make a dividend payment to Türk Altin.
249. It is argued on behalf of Mr Ipek that these resolutions are unlawful for the primary reason that they are contrary to Article 26.
250. Article 26 provides as follows:

"26 1 Each shareholder shall exercise all voting rights and powers of control to procure that, save with A Shareholder [i.e. Mr Ipek's] Consent the Company shall not effect any of the following matters

...

(c) Permit the Company to take any step to place the Company into administration or receivership or wind up the Company

(save where it is insolvent within the meaning of section 123 of the Insolvency Act 1986)

26 2 As a separate obligation, severable from the obligations in clause 26 1, the Company agrees that, save with A Shareholder Consent, the Company shall not effect any of the matters referred to in subparagraphs (a) to (c) of Article 26 1 above”.

251. Counsel for Mr Ipek argue that it is at the very least arguable that these provisions render the Wind-down Resolution and the Capital Reduction Resolution invalid or unlawful as these resolutions were manifestly, being passed as steps to a winding up of the Company.
252. I do not agree with this analysis. The implementation of these resolutions would not inevitably lead to a winding up of the Company. After the Company had been wound down so that it had minimal assets and liabilities, there is no logical reason why it could not be maintained indefinitely, and there is no commercial reason why Türk Altin would need to go further and cause the Company to be wound up (or put into administration or receivership). Clearly Türk Altin was looking to engineer a position (along the lines of the postulated wind-down resolutions) that would cause the Company to become an empty shell. But that did not mean that the Company would inevitably be wound up.
253. Mr Sheehan argues that Article 26 needs to be read commercially. In support of this proposition he referred to Snowden LJ’s judgment in *Ventura Capital GP Ltd v DnaNudge Ltd* [2023] EWCA 1142, [2024] 1 BCLC at [51] to the effect that:

“the process of interpretation to arrive at the true meaning of a provision in a company’s articles of association must concentrate on the natural and ordinary meaning of the words used, when viewed in light of the scheme and purpose of the articles in general, any extrinsic facts about the company or its membership that would reasonably be ascertainable by any reader of the company’s constitution and public filings at Companies House, and commercial common sense”.

He referred also to a statement in *Chong & others v Alexander and another* [2016] EWHC 735 (Ch), a decision of Richard Spearman QC sitting as a Deputy High Court Judge, to similar effect. He argued that read commercially, Article 26 should be seen as prohibiting any step that would cause the Company to cease to exist in any meaningful way and that in prohibiting a step “to wind-up” the Company this must be given a broader interpretation than merely a formal step relating to a shareholders’ voluntary liquidation.

254. I do not consider that this is the natural meaning of the phrase in Article 26, and I think it is going too far in purposive interpretation to give the phrase this extended meaning - particularly given the uncertainty that this would involve, since it could be argued that any sale of an asset or substantial dividend and capital reduction could be regarded as a step towards a winding up.

255. I also reject a textual argument based on the difference between the language of Article 26 (c) (“permit any step”) on the one hand and Article 26(a) (“permit or cause to be proposed”) and article 26(b) (“Permit the appointment or removal of any person as director of the Company”) on the other. The fact that Article 26(c) uses the reference to “steps” does not mean that steps that are calculated to wind down the operations of the Company so that the Company becomes a mere empty shell are steps “to” winding up the company. There are many dormant companies that remain in existence for very long periods of time.
256. Even if I am wrong on these points, however, the point leaves Mr Ipek on the horns of a dilemma. If his argument is correct and Article 26 is a bar to anything like the postulated wind-down resolutions, then the postulated wind down resolutions do not provide a solution to this insupportable impasse that I have found. Therefore on the logic of the First SJA Judgment a just and equitable winding up should be allowed. However, if I am right, then Mr Ipek is not justified in resisting these resolutions on the grounds of a breach of Article 26, his continued failure to implement them separately demonstrates the continued existence of the impasse and reveals the unsatisfactory nature of the postulated wind-down resolutions as an alternative to the just and equitable winding up.
257. On this basis, I consider I must accept the argument made on behalf of Türk Altin that the use of Article 4 is not going to provide an alternative to a just and equitable winding up as a solution to the currently insupportable impasse that I have found of its nature justifies a just and equitable winding up.
258. However, I must consider Mr Ipek’s other argument, that Türk Altin is being unreasonable in refusing to engage with other possible solutions in the form of offers that Mr Ipek has obtained from a procurement company known as “Tamarack” and a group of companies referred to as ETS. It is Mr Ipek’s position that one or more of these offers represents a suitable alternative remedy to a winding-up or at least that (for the purposes of summary judgment) it is arguable that this is the case and that, by the time of trial, Mr Ipek will be able to defeat Türk Altin’s winding-up petition on that basis.

14. LEGAL PRINCIPLES RELATING TO ALTERNATIVE REMEDIES

259. Under the express terms of s.135(2) IA 1986 the court’s power to order a just and equitable winding up:

“...does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy”.

260. In *Lau v Chu* Lord Briggs held at [20] that there were three questions to be asked on a just and equitable petition:

- i) is the applicant entitled to some relief?
- ii) if so, would a winding up be just and equitable if there were no other remedy available?

- iii) if so, has the applicant unreasonably failed to pursue some other available remedy instead of seeking winding up?
261. Whilst the burden is on the petitioner at stages (i) and (ii), it shifts to the respondent at stage (iii) (see at [21]).
262. It is argued for Türk Altin that the following are relevant factors in considering whether it is unreasonable for a petitioner to refuse an offer to buy its shares.
263. The first factor suggested is whether acceptance of the offer would result in a binding agreement.
264. To make good on this point, Türk Altin refers to the decision of Mithani J in the BVI case of *Jin Yao Holdings Ltd v Forever Winner International Ltd* (Claim No. BVIHC(COM) 0641 of 2024, 14 May 2025) where he said at [35],
- “the terms of the offer (express or implied) must be sufficiently certain to be capable of being unconditionally accepted and should not be made on a “subject to contract” or any other basis that would not result in any immediate binding agreement being concluded on the acceptance of the offer.”
265. Türk Altin refers also to *Griffiths v Griffiths* [2023] EWHC 175 (Ch), where an offer was rejected as the basis for dismissing an unfair prejudice petition because matters were subject to contract, a number of points remained to be worked out, and there was nothing to stop the offeree pulling out (see at [161]).
266. Against this Mr Ipek’s Counsel have referred me to *Re Cyracuse Ltd* [2001] BCC 806 where there were applications to strike out winding up petitions issued by single petitioner in circumstances where the respondent companies claimed that there was an alternative remedy of an offer for the petitioner’s shares and that the petitioner was acting unreasonably in seeking a winding up rather than pursuing that alternative remedy. In this case the burden was on the applicants to satisfy the court that this was a proper case to strike out the petition – it would need to be “plain and obvious” that the petition could not succeed on this basis. The Judge accepted that it might be unreasonable to fail to accept an offer even where there may be drafting problems in formulating the detailed agreement governing the machinery for ascertaining the value of shares: he thought that in those circumstances the solution might be to stand over the application to strike out for a limited period to allow the parties an opportunity to formulate the detailed agreement.
267. Mr Ipek’s counsel also refer to *Re HG Robinson & Sons Limited* [2020] EWHC 1 (Ch) where ICC Judge Burton cited *Re Cyracuse Ltd* with approval and considered (at [39]):
- “The costs and inconvenience to all parties of a liquidation when coupled with the encouragement which the Court should give to offerors to amend their offers and my assessment of the limited extent to which a liquidator would be likely to engage in much beyond a fairly rough and ready approach to making adjustments for the Respondents’ alleged wrong-doing, lead me to conclude

that in isolation, ground (a) was not sufficient to justify the Offer being dismissed out of hand.”

The rejected ground (a) was the petitioner’s complaint that the offer would not provide compensation for wrongdoing by the respondents whereas a winding-up might. This case also gave consideration to the possibility of an unfair prejudice claim offering an alternative to a just and equitable winding up.

268. The second factor suggested is whether the petitioner can be sure that the offer is at a fair price (having regard to the return the petitioner could expect in a winding up).

269. Here Türk Altin refers to *Virdi v Abbey Leisure* [1990] BCC 60 where a petitioner had refused an offer to purchase shares (in accordance with the valuation provisions of the articles) because there was a risk that this mechanism might apply a discount to the proportionate value of the company’s assets to which the petitioner would be entitled in a winding up. Balcombe LJ (at page 67) accepted there was nothing unreasonable in the petitioner:

“refusing to accept the risk of a discount being applied to the valuation of his interest in the company”.

270. The third, and said to be related, factor is whether the petitioner has been given sufficient information to be sure that the offer is at a fair price.

271. Here Türk Altin refers to *O’Neill v Phillips* [1999] 1 WLR 1092 (“*O’Neill*”). In this case, one of the “guidelines” specified by Lord Hoffmann for offers in the context of unfair prejudice petitions was that they should “provide for equality of arms”, giving both parties “the same right of access to information about the company which bears upon the value of the shares” (see p1107 at H).

272. The fourth factor is whether the offer takes into account the value of any claims that the company may have and/or whether it would be better for a liquidator to investigate and pursue the same.

273. Here reference is made to *Graham v Every* [2014] BCC 376, where Arden LJ at [47] held that a failure of a petitioner to accept an offer was not unreasonable because, amongst other things, the valuation on which it was based “takes no account of his allegations about ... financial mismanagement”.

274. Reference is also made to the conclusion that it was not unreasonable for the petitioner in *Lau v Chu* not to pursue a potential alternative remedy as the remedy

“would not ... do anything about ... claims against Mr Chu for misfeasance and breach of fiduciary duty, which would better be investigated and (if thought fit) pursued by a liquidator” (see [67]).

275. The fifth factor is whether the offer makes any provision for costs. That was another of the *O’Neill* “guidelines” (see pp1107H-1108B), and the failure to make an offer in relation to costs was another factor relied upon in *Graham v Every* at [47]. Very recently, in *Magic Investments SA v Broadbent* [2026] EWCA Civ 711 at [51]-[55] the

Court of Appeal rejected an argument that an offer was reasonable as it had been made eight months after the petition had been issued and made no provision for costs.

276. The sixth factor is whether the offer would achieve a “clean break” between the warring parties. Another of the reasons for the conclusion that it was not unreasonable for the petitioner in *Lau v Chu* not to pursue a potential alternative remedy was that the remedy “would not achieve a clean break” (see at [67]).
277. The seventh factor is whether accepting the offer would expose the petitioner to risk.
278. Mr Sheehan for Mr Ipek casts doubt on whether these factors are necessarily applicable, preferring an approach where the court just applies the statutory test of reasonableness. Mr Sheehan is, of course right that these factors are not be regarded as if they were statutory requirements – they are merely indications of the sort of thing that a petitioner might call in aid against an accusation that the petitioner was not acting reasonably in failing to accept an offer. However, to that extent they are points that the court can and should consider.
279. With these points, and that caveat, in mind I turn to a summary of the offers and the reasons why Türk Altin says that it is refusing to engage with these offers.

15. THE ETS OFFERS

280. ETS (or the “**ETS Group**”) is an international group of companies owned by Mr Ejaz Tauseef Shamsi. The ETS Group comprises a number of companies, including ETS Global Holdings (USA) (“**ETS Global Holdings**”), ETS Global Trading LLC (“**ETS Global Trading**”), and ETS Mining Corporation (“**ETS Mining**”).
281. ETS Mining is an SPV set up in January 2026 as the intended counterparty to an offer to purchase the SAM Alaska Project assets. There are two live offers (the “**ETS Offers**”).
282. The “**ETS Restructuring Offer**” was made on 23 January 2026. The terms of that offer are:
- i) ETS will pay to Koza Ltd a single upfront sum of US\$50 million.
 - ii) With Türk Altin’s consent, Koza Ltd will then distribute that US\$50 million to Türk Altin in exchange for the cancellation of 100% of Türk Altin’s shares in Koza Ltd.
 - iii) Koza Ltd will then issue fresh shares to ETS, leaving ETS as the Company’s 100% ordinary shareholder.
283. ETS has recognised that Mr Ipek’s Class A Share is worth 25% of the total value of the Company.
284. On 8 March 2026, ETS confirmed that it was willing, as an alternative to the ETS Restructuring Offer, to structure its offer as a straightforward acquisition of Türk Altin’s shares in Koza for US\$50 million (the “**ETS Share Sale Offer**”). ETS is willing to place these funds into escrow within two business days of Türk Altin’s acceptance.

285. Türk Altin's position is that it cannot possibly be said to be acting unreasonably in refusing to accept the ETS Offers. It argues that there is an embarrassment of material that throws up red flags in relation to ETS and the ETS Offers.
286. In particular there is good evidence that an original proof of funds letter provided by ETS is a forgery. Mr Ipek's solicitors provided Türk Altin with a letter purporting to confirm that ETS maintains a banking relationship with "Truist Bank, Weston Branch" and that it holds US\$57,521,894.38 in a bank account with it (the "**Truist Letter**"). The Truist Letter was purportedly signed by a "Frank Adams", who is said to be an "Assistant Vice President" at Truist Bank's Weston Branch.
287. Türk Altin's investigations resulted in the bank confirming that: (i) no individual named "Frank Adams" was employed at the Weston branch of Truist Bank at the date of the Truist Letter (or ever), and (ii) there were several irregularities in the Truist Letter such that the bank manager did not believe it to be an authentic letter issued by the bank.
288. Türk Altin argues that in circumstances where there is very strong evidence that the Truist Letter is a forgery it is impossible for Türk Altin to have any confidence in dealing with ETS or accepting any offer which ETS might make.
289. ETS has very recently provided a fresh proof of funds letter, purportedly from El Nilein Bank Abu Dhabi, in respect of a different entity, ETS Global Trading LLC, and a document purporting to be an "Account Balance Confirmation" in the name of ETS Ventures Limited indicating that as at 8 January 2026 c.US\$62.3 million was held by it with Airwallex (Hong Kong) Limited. It is unclear how this is said to relate to the new proof of funds letter from El Nilein Bank Abu Dhabi (or indeed the earlier Truist Letter). Türk Altin has expressed concerns that both new documents are also suspiciously similar to the Truist Letter. Türk Altin has had limited time to investigate these documents but, based on what it has discovered, it does not accept their authenticity. It notes that:
- i) the Airwallex document does not match any of the kinds of account statements which users can generate (according to its website), despite the document being said to be "system-generated";
 - ii) nor does Türk Altin understand why ETS would have provided the forged Truist Letter, if the Airwallex letter was genuine and generated on 8 January 2026.
 - iii) The El Nilein document has been edited by a "Mobile User" in a way which is inconsistent with it having been provided by a bank. Moreover:
 - a) the spelling of the bank's name on the document does not match either of the ways the bank's name is spelt on its website; and
 - b) the logo on the document is visibly blurry and warped in a way consistent with it having been copied and pasted and resized.
290. Whilst Mr Ipek's lawyers have produced some explanations as to why there are discrepancies in the El Nilein document, it is understandable that Türk Altin remains suspicious about these documents, particularly as it has never been given originals with the meta data but only PDFs that have had the appearance of having been edited. ETS

also refers to having provided “audited financial information, which clearly evidenced ETS’s financial standing and capability” to Koza Ltd. But Türk Altin has seen none of that, and it is difficult to understand how such material could exist given that ETS, and each of the members of its group disclosed in a corporate structure chart provided by ETS, are very recently incorporated entities.

291. Türk Altin considers that other results from Türk Altin’s investigations also raise concerns.
292. Türk Altin regards it as inexplicable as to why ETS would offer such a generous valuation of Mr Ipek’s A share or ignore the challenges that have been made to its validity.
293. Türk Altin is therefore concerned that ETS Offers may have been orchestrated by Mr Ipek either as a tactic to disrupt the winding up petition and/or as a front to enable him to acquire the Company himself (given any direct offer from him would not be accepted as a result of Türk Altin’s concerns regarding Turkish criminal law).
294. Added to these concerns about the genuineness of the offer Türk Altin notes that it is not a firm offer - basic parameters as “transaction structure and valuation” are still said to be “matters of commercial negotiation and are inherently subject to discussion, refinement and differing perspectives” .
295. Secondly, Türk Altin considers that the purchase price under the ETS Offers (US\$50 million) may well represent a significant undervaluation of its shares in Koza Ltd, particularly as ETS has explicitly stated that it is allocating 25% of the value of Koza Ltd to Mr Ipek’s A share. On a winding up, Türk Altin would get 100% of the value generated by the realisation of all of Koza Ltd’s assets (less £1).
296. Thirdly, Türk Altin argues that when assessing what Türk Altin might receive on a winding up, one needs to take into account not only the value of the SAM Alaska Project but the value of Koza Ltd’s other assets, which include its other projects (which are given a value in Koza Ltd’s management accounts of c.US\$10.6 million), cash and investments (c.US\$8 million) and claims against Mr Ipek for breach of fiduciary duty (c.US\$24.3 million and possibly more).
297. Türk Altin notes that the Jones Report, which Mr Ipek previously relied on and which uses information that appears to have come from the asset schedule appended to Koza Ltd's December 2024 management accounts, concluded that Koza Ltd was worth c.£65m (being approximately US\$87.3 million), significantly more than ETS is offering. Therefore, on Mr Ipek’s own figures, the ETS Offers represents a substantial undervalue, and in those circumstances it is difficult to see how it can be said that it is unreasonable for Türk Altin not to accept it.
298. Mr Ipek now seeks to argue that Koza Ltd’s assets other than SAM Alaska have “minimal” value but Türk Altin says this ignores Koza Ltd’s cash and investments (as well as claims against Mr Ipek himself), and in relation to other mining projects is entirely contrary to the position Mr Ipek has been taking in Koza Ltd’s accounts as recently as 30 September 2025, where he valued them at c.US\$10.6 million.

299. Türk Altin argues that these abrupt changes in valuation gives rise to real problems when it comes to ascertaining the value of any offer for Türk Altin's shares because it cannot put any faith in any information that emanates from Mr Ipek and is compounded by Mr Ipek's refusal to provide Türk Altin with the information which it would require to satisfy itself as to the appropriateness of the ETS Offers.
300. Finally, in light of the features above, Türk Altin considers there are grounds for considering that Mr Ipek lies behind the ETS Offers or will stand to benefit from it directly or indirectly. In those circumstances, it has had advice from its Turkish lawyer, Mr Gezgin, that there is a real risk of criminal investigation and prosecution for Türk Altin and those in control of it for either financing or aiding a terrorist organisation or providing or collecting funds for the direct or indirect benefit of a sanctioned individual.
301. I agree that, in view of these concerns, Türk Altin cannot be seen as being unreasonable in refusing to engage with the ETS Offers.

16. THE TAMARACK OFFERS

(a) *Outline of the offers*

302. Tamarack is the name of a Canadian procurement group owned (or as it transpires previously owned) by Mr Ben-Schoeman Geldenhuys. Mr Geldenhuys is a businessman with over twenty years of experience in the mining industry, albeit much of that spent in procurement rather than operations.
303. On 9 September 2025, Tamarack made an offer to purchase Koza Ltd's interests in SAM Alaska. This offer was revised on 30 January 2026 (the "**Tamarack Asset Offer**"). In summary this offer provides for:
- i) Tamarack to purchase Koza Ltd's direct and indirect interests in the SAM Alaska Project;
 - ii) an upfront payment of US\$40 million to be made to Koza Ltd; and
 - iii) Koza Ltd to have a NSR of 2% per annum capped at US\$24 million.
304. On 23 October 2025, Tamarack made an offer to purchase Türk Altin's shares in Koza Ltd (the "**Tamarack Share Offer**"). In summary, this offer provides for:
- i) Tamarack through a special purpose vehicle called Tamarack MS Holdings LLC ("**Tamarack Holdings**") to purchase all Türk Altin's shares in Koza Ltd;
 - ii) Türk Altin to be paid US\$20 million within 7 days of completion and a further US\$16 million within 90 days of completion, possibly subject to some sort of escrow arrangement;
 - iii) Türk Altin to be granted royalties equal to 2% of all NSRs, capped at an additional US\$32 million; and
 - iv) for there to be a separate arrangement to be made between Tamarack and Mr Ipek for the sale of his A share in Koza Ltd.

305. These two Tamarack offers (the “**Tamarack Offers**”) remain (or at least at the time of the hearing remained) open for acceptance.
306. The Tamarack Offers are both said to be funded by Pan African Resources Plc (“**PAR**”). PAR is a mid-tier gold producer jointly listed on the London Stock Exchange Main Market, the Main Board of the Johannesburg Stock Exchange, and the OTCQX Best Market in the US. PAR has provided evidence that it holds sufficient monies to fund the Tamarack Offers in full (including all royalty components).
307. Tamarack Holdings was (at least at the time of the hearing) willing to discuss and develop these terms further should it be necessary to do so, in particular in relation to escrow, guarantees, costs, and the settlement of related litigation.
308. On 30 January 2026, Tamarack Holdings made the “**Revised Tamarack Asset Sale Offer**”. Again, the relevant terms have developed over time and Tamarack remains open to further discussions. In summary, the terms of the Revised Tamarack Asset Sale Offer are:
- i) Tamarack Holdings will in effect purchase the Company’s shares in Koza USA, SAM Alaska LLC, and GAME (thereby purchasing 100% of Koza’s interests in the SAM Alaska Project), with the purchase being structured in such a way as to ensure compliance with the restrictions in the LLC Agreement on transfers of Koza’s interest.
 - ii) In exchange, Tamarack Holdings will make an upfront payment of US\$40 million to the Company and will pay additional royalties equal to 2% of all NSRs, capped at US\$24 million. This consideration will then be paid to Türk Altin by way of distribution and share cancellation and (in respect of the royalties) under the terms of the agreement.
309. After one of the Tamarack Offers has been put into effect, Tamarack Holdings intends to negotiate the purchase of Mr Ipek’s Class A Share or to enter into new arrangements with Mr Ipek as to his role in the Company.
310. In commenting on the Tamarack Offers, Türk Altin notes that the original Tamarack offeror had been replaced by a newly-incorporated entity, Tamarack Holdings MS LLC (“**Tamarack Holdings**”).
311. Türk Altin says that there are reasons as to why it is not acting unreasonably that are specific to each Tamarack Offer as explained below, and a number of reasons that apply to both offers:

(b) *Türk Altin’s objections applicable generally to the Tamarack Offers*

312. First, in light of what has transpired in relation to ETS, Türk Altin says that it is cautious when it comes to any offers that emanate via Mr Ipek. It is concerned (despite the assurances received to the contrary) that the Tamarack Offers are being orchestrated by Mr Ipek and may be a mere delaying tactic: they note in particular that Tamarack Holdings was responsive to points raised by counsel during the hearing and produced revisions and clarifications that were in particular aimed at points being made in the litigation. This has compounded that suspicion.

313. Secondly, Türk Altin was informed on 9 April 2026 that the offeror had changed from Tamarack to Tamarack Holdings. Tamarack Holdings said this was because using a US entity “makes more sense” and it was “structurally inefficient to include a Canadian entity”. However, Türk Altin notes that this explanation appears to be entirely false. On 21 April 2026, it was announced that Tamarack Mining Services (of which Tamarack formed part) had been purchased by Prometheus Group and, presumably in connection with this sale, on 31 March 2026 Mr Geldenhuys (who is said to be the only shareholder in Tamarack Holdings) resigned as a director of Tamarack. The change of entity is not therefore a matter of structural efficiency – it is a wholesale change of the proposed purchaser, at a time when Tamarack was being sold, with the corporate opportunity being diverted from Tamarack. Türk Altin considers it to be deeply concerning that it was not told this and had to work this all out for itself.
314. Thirdly, Türk Altin is concerned that Mr Ipek may be behind the Tamarack Offers. They have been made more suspicious because Tamarack and Tamarack Holdings have consistently refused to provide information about the Tamarack Offers to Türk Altin, insisting that it must enter into an NDA before it will do so but was willing to provide information to Mr Ipek, just in time for him to be able to reflect this in a witness statement he was due to give. They also note that the Tamarack Offers are similar in structure to those previously made by Mr Ipek.
315. Türk Altin notes further that Tamarack Holdings appears to have a direct or indirect connection to a company called Menar Holdings, an entity that made a previous offer to Türk Altin but then failed to proceed with that offer, and the Managing Director of that company Mr Vuslat Bayoglu, is alleged (presumably by an organ of the Turkish government) to be a member of a terrorist organisation. Türk Altin asked straightforwardly whether Tamarack had any connection to Menar or Mr Bayoglu but has received only a somewhat guarded answer that Mr Vuslat Bayoglu does not have an interest in Tamarack Holdings.
316. The Tamarack Share Offer made specific provision for the acquisition of Mr Ipek’s purported A ordinary share. Türk Altin explained in its evidence why that created Turkish law problems for it. In response, by way of the Tamarack Holdings Letter, it was said that it would:
- “consider this seriously and, in all probability, waive this condition. That will leave us time to deal with Class A shareholder, and if we cannot come to an arrangement, then we will simply deal with the director Mr Ipek as the current shareholder does”.
317. Türk Altin considers this to be an odd position for a supposedly independent purchaser to take and considers this to be a further red flag.
318. Türk Altin considers that it has very good reasons to suppose that Mr Ipek is behind or stands to benefit, directly or indirectly, from the Tamarack Offers, and accordingly a real risk of criminal investigation and prosecution for Türk Altin and those in control of it if it accepts either Tamarack Offer, which it cannot reasonably be expected to run.

319. Fourthly, as with the ETS Offers, Türk Altin points out that the Tamarack Offers are not “offers” that are capable of acceptance in order to bring about a binding contract. In the Tamarack Holdings Letter, it states that:

“[w]e made an offer to Turk Altin in the hope that they would engage on the offer as part of negotiating a commercial transaction, in our experience this would include a possible counteroffer and discussions to see what is acceptable and what not” and that “[o]ur offers are not definitive agreements ... The detailed technical aspects would be negotiated as part of a definitive participation agreement including the LLC structure participation”.

320. Türk Altin therefore notes that the most that Mr Ipek can argue is that Türk Altin is acting unreasonably in failing to pursue negotiations to see if a deal can be agreed – and that Türk Altin argues is not an answer to the winding up petition: such a pursuit would be an entirely speculative task as both of the Tamarack Offers have fundamental problems.
321. Fifthly, Türk Altin notes that there is no public record of Tamarack (let alone Tamarack Holdings) owning or operating its own mining projects. Tamarack is instead described as specialising in procurement services and group purchasing; and in any event is no longer involved in the Tamarack Offers at all. This is of importance because a considerable part of the “purchase price” under each of the Tamarack Offers is actually an NSR arrangement, which would only become payable upon the commencement of profitable mining production.
322. Sixthly, for the same reasons as in relation to the ETS Offers, Türk Altin is not in a position to know whether the consideration under the Tamarack Offers is fair and reasonable and has reason to believe that it is not.

(c) *Türk Altin’s specific objections to the Tamarack Asset Offer*

323. Turning to the Tamarack Asset Offer, there are a number of further specific reasons why Türk Altin considers that offer not to be a realistic alternative to a winding up.
324. First, it is not an alternative to a winding up at all. It is in fact an offer to purchase Koza Ltd’s interest in the SAM Alaska Project in return for upfront consideration and an ongoing NSR to be paid to Koza Ltd. The effect of Türk Altin consenting to Koza Ltd agreeing to the Tamarack Asset Offer would simply be that Koza Ltd would now have US\$40 million in cash and an ongoing NSR right rather than its interests in the SAM Alaska Project themselves. Türk Altin would still be locked into Koza Ltd, which would remain deadlocked and under the practical control of Mr Ipek. Indeed, it appears that the proposed structure would positively require Koza Ltd to “remain in existence”.
325. Mr Ipek counters this point by saying that, following the execution of the Revised Tamarack Asset Sale Offer, the realised funds could be distributed to Türk Altin in exchange for the cancellation of its shares in Koza Ltd. The relevant NSR royalties will similarly be distributed to Türk Altin as they accrue through some contractual mechanism. It is argued that the only substantive condition for such a distribution is

Türk Altin's own consent. However I note that, according to Mr Ipek's submissions, this would also require his permission under Article 26.

326. Further, I note that in this case Mr Ipek does not see any problem based on there being an unlawful distribution, which does support my earlier conclusion that, if the parties had the will to do this, the illegality problem involved in the EPA Resolutions could similarly be resolved.
327. Secondly, the Tamarack Asset Sale Offer appears to Türk Altin to be unworkable. It is premised on Tamarack Holdings acquiring membership interests in SAM Alaska LLC. However, GAME (the counterparty to the EPA) has a right of first refusal under the LLC Agreement and a veto right over new members of the LLC. GAME has said it has not even been approached for its consent (and that it would refuse to provide it if asked). In those circumstances, the Tamarack Asset Offer appears to be unworkable.
328. Mr Ipek's counsel answer this point by suggesting there could be dependence on the pre-existing mechanism for "*affiliates*" of Koza Ltd to gain interests in the SAM Alaska Project under the LLC Agreement, and by keeping Koza Ltd in existence for the purpose of exercising the Warrant. I am not sure that I have a sufficient understanding of the arrangements within SAM Alaska LLC to determine whether this solution is workable. However, in the context of a summary judgment, I will assume that this point might go in favour of Mr Ipek.
329. Fourthly, Türk Altin considers that the Tamarack Asset Offer appears to be intended by Mr Ipek to, in substance, buy Türk Altin out of its entire interest in Koza Ltd at what it considers to be a gross undervalue. The consideration for the Tamarack Asset Offer would be an upfront payment of US\$40 million and an NSR capped at US\$24 million. Mr Ipek says that he intends to distribute the US\$40 million to Türk Altin "in exchange for the cancellation of its shares" in Koza Ltd, and that the NSR royalties would be "channelled to Türk Altin by way of contract". That means that there would be no return of value in respect of Koza Ltd's other assets. In a late development Tamarack Holdings has indicated a willingness "to consider" acquiring the non-core mining projects or mining rights for an additional amount to be determined by an independent valuer jointly appointed "provided that the resulting valuation and purchase price remain commercially reasonable". Whilst this mitigates the point to some extent, I can see why Türk Altin might be concerned to place little reliance on such a cautiously worded concession.
330. Fifthly, Türk Altin's Turkish legal adviser, Mr Gezgin, has advised Türk Altin that the Tamarack Asset Offer gives rise to the same real risk of criminal investigation and prosecution as the ETS Offers. In particular, consenting to an arrangement under which Koza Ltd's assets are sold can still amount to financing or aiding or providing funds under Turkish law.
331. It is argued for Mr Ipek that Mr Gezgin's evidence is rendered valueless by the fact that he was instructed to proceed on the assumption that "*the purchasers are not independent of Mr Ipek and/or Mr Ipek stands to benefit directly or indirectly from the transactions*". Türk Altin has adduced no evidence of any link between Mr Ipek and Tamarack Holdings or ETS to make good that assumption. Mr Ipek's evidence is that both potential purchasers are independent from him. To put the matter beyond doubt, he has also indicated that (if necessary) he would not object to restrictions being

imposed on Tamarack Holdings or ETS selling its interests to Mr Ipek, his family members or associates, following similar restrictions that Türk Altin included in the EPA.

332. These points do appear to pour doubt on this concern of Türk Altin and for the purposes of my assessment, in the context of a summary judgment, I consider that I should work on the assumption that Mr Ipek may be correct.

(d) Türk Altin's specific objections to the Tamarack Share Offer

333. Türk Altin considers that there also numerous specific reasons why the Tamarack Share Offer is not a realistic alternative to a winding up:

334. First, the total upfront consideration is only US\$36 million, which is payable in three months, and the total consideration including NSR payments is US\$68 million. Türk Altin considers that this figure may represent a significant undervaluation of Türk Altin's shares in Koza Ltd. The upfront consideration would certainly do so, and the NSR element is both uncertain and deferred. Further, the total consideration of US\$68 million is only US\$4 million more than the total consideration which Tamarack Holdings would pay under the Tamarack Asset Offer simply to purchase Koza Ltd's interests in the SAM Alaska Project, suggesting that Koza Ltd's other assets (even its liquid investment portfolio) have been given no proper value. The upfront cash payment under the Tamarack Share Sale Offer (US\$36 million) is also actually less advantageous than the Tamarack Asset Offer (US\$40 million).

335. Secondly, Türk Altin argues that the consideration structure gives rise to a number of risks for Türk Altin which it cannot reasonably be expected to run:

336. The offer requires Türk Altin to transfer its shares in Koza Ltd with no upfront payment but on the basis of a promise of payments from Tamarack Holdings in 7 and 90 days respectively. In fact there were indications in Mr Ipek's evidence suggesting an even worse arrangement, where Türk Altin would not actually receive the "upfront" consideration for an indefinite period, and may never receive it. Tamarack Holdings has sought to address this issue by saying that the payment timing "is a simple matter of agreement" and indicating that this was up for negotiation. Türk Altin argues that that only illustrates that there is no "offer" here at all, with points of real difficulty and commercial import being left entirely open.

337. In addition, a substantial part of the consideration is based on NSR royalties (US\$32 million of the total US\$68 million). However, Türk Altin considers that Tamarack Holdings appears to lack any mining experience (it is an SPV owned by a former director of a mining procurement business). Türk Altin considers that it is entirely within its rights to be unwilling to take the risk of such an arrangement with Tamarack Holdings. Whilst this ignores the fact that Tamarack Holdings is said to be backed by PAR and that company does have extensive mining experience, nevertheless, I can see the reluctance to engage with the new SPV where the involvement of PAR is not described beyond a vague reference to it being a funder and possible future shareholder.

338. Thirdly, the Tamarack Share Offer involves as a condition of the transaction a sale by Mr Ipek of his A share to Tamarack Holdings. Mr Gezgin has advised Türk Altin that Türk Altin cannot enter into a transaction which is conditional on a parallel transaction

being agreed with Mr Ipek for the purchase of his share without exposing itself and those controlling it to a real risk of criminal investigation and prosecution. Tamarack Holdings has responded on this issue by saying that they might:

“waive this condition. That will leave us time to deal with Class A shareholder, and if we cannot come to an arrangement, then we will simply deal with the director Mr Ipek as the current shareholder does.”

339. For the purposes of a summary judgment, I consider that I should operate on the assumption that this waiver is available, and deals with the specific issue that Mr Gezgin has identified. However I do have sympathy with the point that Türk Altin makes that this is an odd position for a supposedly independent purchaser to take and that this late change is another example of the lack of definition and of certainty in the Tamarack Offers.
340. Fourthly, there are specific terms of the Tamarack Share Offer to which Türk Altin considers that it could not reasonably be expected to agree.
341. The Offer requires the withdrawal of all legal proceedings between Türk Altin, Mr Ipek and Koza Ltd. This is outside of Türk Altin’s control (and there has been no specific pledge from Mr Ipek to agree to it) would also require Türk Altin to commit to withdrawing legal proceedings prior to the transaction being completed; and makes no provision for the significant costs of the proceedings to date.
342. The Offer envisages Türk Altin giving typical warranties. Türk Altin is unwilling to give such warranties in circumstances where it has been out of control of its subsidiary for 10 years and has serious and well-founded concerns about how Mr Ipek has been running the company in the meantime. However Tamarack Holdings has said that the point “has never been discussed so it is open”, and has given an indication that:

“we would expect warranties typically pertaining to what a non-participating shareholder could give. So, for instance right to transfer title in shares, stopping litigation against the entity whose shares we acquire. Things of that nature.”

Given this response, I do not consider that warranties are likely to be a sticking point in bringing forward this transaction, although the fact that this discussion is still underway does again illustrate that the Tamarack Offers have not really got beyond a very preliminary stage.

343. Whilst, as I have noted, one can quibble about how substantial are some of the objections that Türk Altin has put forward, taking all of these objections together I consider that, even discounting the points made by Türk Altin and discussed at [329], [330], [338], and [342], Türk Altin is clearly not being unreasonable in refusing to engage with the Tamarack Offers.

17. CONCLUSION IN RELATION TO THE OFFERS

344. In light of how long this dispute has been running, and the diminishing state of Koza Ltd's finances, Türk Altin argues that it would be inappropriate to put off winding up yet again in the hope that these offers might bear fruit.

345. Türk Altin submits that, one needs to take a step back. It is highly unusual, when it comes to a just and equitable winding up petition, to rely on offers made by third parties as an answer to the petition. Türk Altin is aware of no case in which that has happened, let alone in relation to a private company, and let alone successfully. It argues that there is good reason for that. The court already has control over the parties, but it does not have any control over third parties; and the parties are already co-shareholders so a transaction between them does not involve forcing someone to transact with a stranger against their will. It would be very strange thing to hold that a third-party offer could be an answer to a winding up petition in any case, but in this case, the position is particularly stark:

- i) it is a 100% ordinary shareholder that is being asked to sell to third parties;
- ii) there are no firm offers capable of acceptance at all but "moving feasts";
- iii) there are multiple and serious concerns about the proposed offers, in terms of value, structure, propriety, practicability and potential criminal law consequences;
- iv) the offers are inconsistent with an agreement that Türk Altin has already reached and that it wishes to honour or for a liquidator to honour (the EPA); and
- v) Türk Altin has already been locked out of its investment and frustrated for a decade. Türk Altin argues that it would be extraordinary to refuse relief in such circumstances and that this is an *a fortiori* case for the application of Lord Briggs' observation in *Lau v Chu* that:

"[t]he member retains a significant element of choice in the remedy to be sought".

346. During the hearing Mr Sheehan put forward various points in response to individual objections raised by Türk Altin including those I have mentioned above. But even taking his points at their highest, I consider that Türk Altin is not being unreasonable in refusing to engage with the various offers that have been procured by Mr Ipek.

347. I have to consider (both by reference to the evidence currently before me and the evidence that might emerge at trial) whether the contrary case is so weak that Mr Ipek could still be said to have a realistic as opposed to a fanciful prospect of success in demonstrating that Türk Altin is being unreasonable. However, even considering this very low bar, I do not see that Mr Ipek can surmount it. Both the ETS and the Tamarack Offers do raise a whole series of red flags that it is clearly reasonable for Türk Altin to take into account in its choice of counterparty. Both remain speculative at this point and are nowhere near an offer that is capable for acceptance and thus involve a considerable level of transaction risk with counterparties that Türk Altin does not know and has no reason to trust. There are valuation issues involved and issues concerning asymmetry

of information. Türk Altin has some justification for suspecting wrongdoing on the part of Mr Ipek and none of the offers would allow this to be investigated. The offers involve risks of non-payment. The asset offers do not provide a clean break.

348. I have considered whether, as was proposed on behalf of Mr Ipek very late in the day, I should exercise a discretion to stay these proceedings in order to afford the parties an opportunity to progress the Tamarack Offers. In view of the nature and extent of Türk Altin's reasons for not wishing to engage any further with the Tamarack Offers, I do not consider that this would be fruitful. That being the case, I consider that I must consider the reasonableness of Türk Altin's stance in not wishing to engage any further with Tamarack Holdings by reference to the circumstances as they appeared at the time of the hearing.
349. In all these circumstances, I consider it reasonable for Türk Altin to regard each of the offers introduced by Mr Ipek as a poor substitute for a just and equitable winding up and I do not consider that Mr Ipek has any realistic prospect of showing that Türk Altin is not being unreasonable in taking that stance. It is possible that the offers may be improved or clarified, but that would essentially be a new set of circumstances for a court to consider in relation to the question whether Türk Altin was acting unreasonably. It is not an answer to the circumstances as they exist today, which are the circumstances upon which I must determine this application. I cannot determine the question of whether Türk Altin is acting unreasonably on the basis that a better offer might turn up.
350. This being so, I accept that Türk Altin has established its case that summary judgment should be given in its favour on its petition for a just and equitable winding-up.

18. THE PART 8 CLAIM

351. In view of my determination that there should be a just and equitable winding up, there is no need, and no point, in determining the Part 8 claim relating to declarations in relation to the enforceability of the special resolutions and Türk Altin does not ask me to do so in the circumstances. Further, in these circumstances it is difficult to see how it would be just and equitable to grant an injunction in relation to the special resolutions. I will, therefore, leave this question unresolved.
352. I have, however given an indication above on where I stand in relation to the most important of these resolutions.

19. THE SERVICE OUT APPLICATION

(a) Legal Issues engaged

353. Turning to the Service Out Application, there is no real question that that one or more gateways are available, and that England is clearly or distinctly the most appropriate forum. The only dispute is to whether there is a reasonable prospect of success as required by CPR 3.67(1)(b). Mr Ipek must satisfy the court that there is a serious issue to be tried on the merits of his unfair prejudice petition.
354. This means showing that there is a real (as opposed to fanciful) prospect of success: i.e. a sufficient case to survive summary judgment (see *Vedanta Resources Plc v Lungowe*

[2019] UKSC 20 at [42] and *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2012] 1 WLR 1804 (PC) at [71].)

355. Mr Ipek’s proposed claim is brought under s.994 CA 2006, which provides as follows:

(1) A member of a company may apply to the court by petition for an order under this Part on the ground—

(a) that the company’s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or

(b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

356. The applicable principles were recently summarised by Chief ICC Judge Briggs in *Hashmi v Lorimer-Wing* [2023] EWHC 1514 (Ch) at [65]. In summary, a petitioner under s.994 must show:

- i) standing,
- ii) that the matters complained of comprise acts of the company or the management of the company’s affairs,
- iii) that those acts are inequitable or contrary to the law, and
- iv) that the petitioner has suffered, or will suffer, prejudice to their interests as a member in a manner which is unfair.

357. Should a petition for unfair prejudice be found to be well founded, the court may make “such order as it thinks fit for giving relief in respect of the matters complained of” (s.996(1)). Such an order includes, for example, an order providing for the purchase of the shares of one member of the company by another (s 996(2)). In this case, Mr Ipek intends to seek an order providing for the purchase of Türk Altin’s shares by him, by Tamarack, or by ETS.

358. The concept of “unfairness” for the purposes of section 994 of CA 2006 is not an open-ended enquiry. As Lord Hoffmann explained in *O’Neill* at 1098-1099, it “must be applied judicially and the content which it is given by the courts must be based upon rational principles.” As Warner J. said in *In re J.E. Cade & Son Ltd.* [1992] B.C.L.C. 213, 227:

“The court ... has a very wide discretion, but it does not sit under a palm tree”.

359. The principles developed in the authorities were summarised by Patten J in *Grace v Biagoli* [2006] BCC 85 (CA) at [61]:

“(1) The concept of unfairness, although objective in its focus, is not to be considered in a vacuum. An assessment that conduct is

unfair has to be made against the legal background of the corporate structure under consideration. This will usually take the form of the articles of association and any collateral agreements between shareholders which identify their rights and obligations as members of the company. Both are subject to established equitable principles which may moderate the exercise of strict legal rights when insistence on the enforcement of such rights would be unconscionable.

(2) It follows that it will not ordinarily be unfair for the affairs of a company to be conducted in accordance with the provisions of its articles or any other relevant and legally enforceable agreement, unless it would be inequitable for those agreements to be enforced in the particular circumstances under consideration. Unfairness may, to use Lord Hoffmann's words, "consist in a breach of the rules or in using rules in a manner which equity would regard as contrary to good faith": see [1999] B.C.C. 600 at p.607B; [1999] 1 W.L.R. 1092 at p.1099A; the conduct need not therefore be unlawful, but it must be inequitable.

(3) Although it is impossible to provide an exhaustive definition of the circumstances in which the application of equitable principles would render it unjust for a party to insist on his strict legal rights, those principles are to be applied according to settled and established equitable rules and not by reference to some indefinite notion of fairness.

...

(5) A useful test is always to ask whether the exercise of the power or rights in question would involve a breach of an agreement or understanding between the parties which it would be unfair to allow a member to ignore. Such agreements do not have to be contractually binding in order to found the equity..."

360. In this regard, I note that Mr Ipek advances no case that there is such an agreement or understanding in this case (beyond that contained in the Company's articles of association).
361. The concept of "prejudice" was considered by *Re Coroin Ltd* [2012] EWHC 2343 (Ch) at [630-631] (in a passage which was approved by the Court of Appeal in *Compound Photonics* at [314-315]). Prejudice will encompass damage to the financial position of a member including "financial damage which in the circumstances of the case is bound up with his position as a member". Prejudice does not have to be financial in character, but where the acts complained of have no financial consequences it may be difficult to establish prejudice.
362. The Court's task is to assess Mr Ipek's case as pleaded (see *Okpahi v Royal Dutch Shell plc* [2021] 1 WLR 1294 (SC) at [22] and [103-105]).

(b) *Mr Ipek's Claim as pleaded*

363. Mr Ipek's draft Points of Claim particularise his claim on the bases that I would summarise as follows:

- i) the Special Resolutions each constitute an actual or proposed act of the Company;
- ii) the Special Resolutions and/or each Special Resolution has caused and/or will cause prejudice to Mr Ipek's interests as a shareholder in the Company. In particular:
 - a) The EPA Special Resolution, the Letter of Direction Special Resolution, the Winding Down Special Resolution, and/or the Capital Reduction Special Resolution, taken separately or together, constitute steps taken to wind up the Company. These Special Resolutions are therefore prejudicial to Mr Ipek's right to prevent steps being taken to wind up the Company absent A Shareholder Consent, contrary to Article 26, and prejudicial to the value of Mr Ipek's shareholding in Koza, in circumstances where the return to Mr Ipek upon a winding-up is limited to £1.
 - b) The EPA Special Resolution and/or the Letter of Direction Special Resolution constitute steps to cause the Company to sell the SAM Alaska Project at an undervalue. These resolutions are therefore prejudicial to the value of Mr Ipek's shareholding in the Company.
 - c) The Whitehall Special Resolution, the Winding Down Special Resolution, and/or the Capital Reduction Special Resolution constitute steps with the effect or risk of devaluing the Company. These resolutions are therefore prejudicial to the value of Mr Ipek's shareholding in the Company.
 - d) The Whitehall Special Resolution, the EPA Special Resolution, the Letter of Direction Special Resolution, the Winding Down Special Resolution, and the Capital Reduction Special Resolution (taken together and/or individually) constitute acts of management of the Company by Türk Altin. These resolutions therefore usurp Mr Ipek's management of the Company and are prejudicial to his right to prevent any steps being taken to frustrate his managing control as the sole director of Koza.
 - e) The prejudicial acts particularised in the previous sub-paragraphs are unfair in that, individually and/or collectively, they are unlawful and/or contrary to the Company's articles of association and/or in that compliance with those acts would necessarily entail a breach by Mr Ipek of his duties to the Company, and/or because they are in any event unfair having regard to Mr Ipek's rights and interests as an A Shareholder and the circumstances generally.

(b) *Türk Altin's argument regarding logical impossibility*

364. Türk Altin's counsel contend that the basis of unfair prejudice pleaded is logically impossible, since there are only two possibilities: either the Special Resolutions are valid (in which case they must be accepted not to have been unfairly prejudicial) or they are invalid (in which case they could have no unfairly prejudicial effect, and would not amount to acts of the Company or the conduct of the Company's affairs) - a vote to attempt to pass a resolution is not an act of the company or conduct of its affairs. For this latter point, they refer the court to dicta of Harman J in *Re Unisoft Group Ltd (No 3)* [1994] BCC 766 at p767:

“... wide as the category of acts may be it is necessary that the act or omission is done or left undone by the company itself or on its behalf. Thus voting at a general meeting, whether annual or extraordinary, may result in a resolution being passed or defeated. The resolution is, obviously, an act of the company notwithstanding that the votes which pass or defeat it are the votes of members which are their private rights which, on the longstanding authority of *North-West Transportation Co Ltd & Anor v Beatty* (1887) 12 App Cas 589, can be exercised by members as they choose. The acts of the members themselves are not acts of the company nor are they part of the conduct of the affairs of the company and cannot found a petition under s. 459”.

365. Conversely, if the court were summarily to dismiss Mr Ipek's argument that the Special Resolutions would be unfairly prejudicial to him, then it would have determined that the Unfair Prejudice Petition discloses no serious issue to be tried, and there would be no need to consider the argument separately in this context.
366. Mr Ipek argues that these arguments lack reality: regardless of the legal nature of the Special Resolutions, they have had real effects including placing him in the invidious position of choosing between refusing to give effect to each resolution by defending his position through litigation or breaching his duties as a director of the Company. Rather than being left to manage the Company in accordance with his reserved management rights, Mr Ipek has spent the last two years responding to, commissioning a legal analysis of, and litigating Türk Altin's special resolutions. The resolutions have also had the real effect of usurping Mr Ipek's management of the Company by requiring that he spend large amounts of time collating and disclosing documents, contesting the EPA, and justifying legitimate management decisions.
367. Further, it is argued on behalf of Mr Ipek that s.994 applies not only in relation to “actual” acts of a company, but also to “proposed” acts which “would be so prejudicial”. On a plain reading, special resolutions which have been proposed but (by reason of their invalidity) have not been put into effect are clearly proposed acts which would cause unfair prejudice if put into effect. In *Re Kenyon Swansea* [1987] 3 BCC 259 at 264-265, Vinelott J held that the immediate threat of an offending resolution being effected is immaterial. Instead, both past resolutions no longer causing prejudice and proposed future resolutions yet to cause prejudice may be relevant so long as:

“an order is required to protect the interests of the petitioner from the consequence of unfair conduct or of an act which has been proposed and which may again be proposed” (*Re Kenyon Swansea* at [265]).

368. Applying this principle, Mummery J held in *Re a Company* (No 00314 of 1989) [1991] BCLC 154 at 160i that

“There cannot be any valid objection to the present petition on the ground that the resolutions which have been proposed from time to time have not been validly passed or have not been passed at all.”

369. More recently, *Hashmi v Lorimer-Wing* [2023] EWHC 1514 (Ch) is to similar effect.

370. Further Mr Ipek refutes Türk Altın’s argument that valid special resolutions cannot give rise to unfairness because: (1) such resolutions have been authorised at a general meeting of the Company and/or: (2) they may be enforced by way of High Court injunction.

371. As to the first of these arguments, it is argued on behalf of Mr Ipek that any special resolution must necessarily be the product of a general meeting in order for it to be valid. Such a meeting is patently capable of causing unfair prejudice, and the mere fact that the shareholders have voted in favour of an unfair resolution does not inoculate it from unfair prejudice proceedings. It is argued further that it is possible that the court might consider it arguable that the Special Resolutions would be unfairly prejudicial to Mr Ipek but determine that this is not a reason to refuse the relief sought in the Part 8 claim, then it will follow from this conclusion that the appropriate forum for complaint about the Special Resolutions is an unfair prejudice petition.

372. It is argued further on behalf of Mr Ipek that Türk Altın’s argument that it is impossible for lawful resolutions to cause prejudice which is unfair, appears to be based on an assumption that there are no equitable considerations which could come into play beyond Mr Ipek’s strict legal rights under the Company’s constitution. It is argued on behalf of Mr Ipek that this is wrong, or at least not capable of summary determination.

(c) *Mr Ipek’s argument that there may be equitable considerations*

373. Mr Ipek relies on the recognition by Lord Hoffmann in *O’Neill* at 1101H that unfairness can arise otherwise than as a result of “breach of some promise or undertaking”. Whilst *O’Neill* was a quasi-partnership case, it is argued that this statement of general principle is of application beyond the quasi-partnership context.

374. In support of this proposition Mr Ipek’s counsel cite HHJ Pule QC (sitting as a High Court Judge) in *Re Sunrise Radio Ltd* [2009] EWHC 2893 (Ch) at [4]:

“There must be both prejudice and unfairness. Prejudice will most often be established by reference to conduct having a depressive effect (actual or threatened) on the value of the petitioner’s shareholding, which will in most cases be a minority holding, typically in a private company with restrictions on

transfer. Unfairness, in turn, most often connotes some breach of the articles, statute, or general principles of company law. However, the operation of the section is not necessarily limited to such cases. The test is an objective one. There may be mutual understandings between shareholders giving rise to special rights of a quasi-partnership kind. Even without that, the conduct of the company's directors may, whether by reason of malevolence, crass stupidity, or something in between, fall so far short of the standards to be expected of them as to lead to the conclusion that the petitioning shareholder cannot reasonably be expected to have the minimum of trust and confidence in the integrity or basic competence of the board that any shareholder is entitled ordinarily to expect. This is so irrespective of any impact on the value of his or her shares, and irrespective of whether any specific breach of the articles, statute, or the general principles of company law is involved."

And at later at [11]:

"I have to decide whether the conduct of which Ms Kohli complains, objectively viewed in the light of the standards the law recognises, was unfair, and (if so) whether she was prejudiced. Of course, if bad faith is made out, Ms Kohli will in all likelihood succeed. If she had additional rights as a quasi-partner, that also may make success more assured. But if she does not make out her case of bad faith, and is not a quasi-partner, she may still succeed. As Hoffmann LJ explained in *Saul D Harrison*:-

"'Unfairly prejudicial' is deliberately imprecise language which was chosen by Parliament because its earlier attempt in s 210 of the Companies Act 1948 to provide a similar remedy had been too restrictively construed...

...

The Jenkins Committee on Company Law, which reported in 1962 ... recommended the use of the term 'unfairly prejudicial'

...

In choosing the term 'unfairly prejudicial', the Jenkins Committee (para 204) equated it with Lord Cooper's understanding of 'oppression' in *Elder v Elder and Watson* [1952] SC 49:-

'a visible departure from the standards of fair dealing and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely'.

It is perhaps worth commenting that this passage does not presuppose a quasi-partnership relationship, or something similar. Every shareholder is entitled to insist upon the observance of the standards of fair dealing and conditions of fair play, which include those standards and conditions the law prescribes as absolute. Trust and confidence is not the exclusive preserve of the quasi-partner.

375. Mr Ipek's counsel place reliance also on *Joffe, Minority Shareholders: Law, Practice, and Procedure* (7th edn) at [5.153]:

Lord Hoffmann's judgment is important in its recognition that unfair prejudice can arise in situations which do not involve either breach of terms on which it has been agreed that the company shall be run, or a quasi-partnership. For that reason:

“A finding of unfairness in any given case is not dependent on establishing either (i) a breach of a legal right [or] duty, or (ii) a breach of a legitimate expectation or of some quasi-partnership arrangement. On the contrary, the court is fully entitled to reach the conclusion that there has been unfair prejudice in the absence of either.”

376. The footnote to this passage shows that it is derived from the decision in *Financial Technology Ventures II (Q) LP v ETFS Capital Ltd* [2021] JCA 176 (Jonathan Crow QC) at [60(h)] and [69].
377. Mr Ipek's counsel contend that it is, at the very least, arguable that even if the Special Resolutions are lawful, they have caused or will cause (if implemented) unfairness to Mr Ipek as a result of the destruction of the Company's business and consequently the destruction of the value of his A share, and by rendering nugatory (and valueless) Mr Ipek's reserved rights under Article 26 of Koza's articles of association.
378. In response to this assertion I consider that it would be more accurate to say in these circumstances the Special Resolutions may have caused prejudice: whether this prejudice is unfair is another matter.
379. Essentially the unfair prejudice claim (as pleaded) depends on the Special Resolutions causing unfair prejudice to Mr Ipek as the holder of an A ordinary shareholder in the following ways:
- i) by devaluing the Company through resolutions that were not in its best interests and thereby devaluing his share;
 - ii) by usurping his right to manage the Company as its director as entrenched in Article 26; and
 - iii) by prejudicing his right under Article 26 to prevent there being steps towards a winding-up of the Company;

- iv) compliance with the Special Resolutions would entail a breach by Mr Ipek of his duties to the Company.

380. Each of these arguments is problematic.

381. As regards devaluing the Company, I have already explained that (in the absence of any equitable considerations as may come about for example in a quasi-partnership) that Türk Altin is entitled to vote its shares in its own interest and to take its own view of what are the best interests of the Company. If it considers that the Company is unlikely to generate value for its shareholders and they could better use a return of capital, it is entitled to use its powers under Article 4 in that way.

382. In *Re Coroin Ltd* [2012] EWHC 2343 (Ch) David Richards J observed at [635] that:

“...Equitable considerations, affecting the manner in which legal rights can be exercised, will arise only in those cases where there exist considerations of a personal character between the shareholders which makes it unjust or inequitable to insist on legal rights or to exercise them in particular way. Typically that will be in the case of a company formed by a small number of individuals on the basis of participation by all or some of them in the management of the company.”

383. David Richards J went on to emphasise the primary role of the terms of the articles of association where equitable considerations are not in play (see at [637]). The petitioner in that case could not claim to have been unfairly prejudiced when nothing contrary to the articles (or a shareholders’ agreement) had taken place.

384. Türk Altin has no duty to maintain the value of the Company so as to keep up the market value of Mr Ipek’s share and to continue to employ Mr Ipek. It is entitled to take steps to realise the Company’s assets and to distribute them to itself. Any such distribution will reduce the value of its own share as well as possibly having an effect on the value of Mr Ipek’s share. The fact that Türk Altin will have received the distribution and Mr Ipek will not receive a distribution (beyond £1) is a feature of the Articles and does not give rise to any unfairness.

385. There is potentially an argument that the EPA Special Resolution is prejudicial in that (as I have found above), without further action to authorise this, at present it must be regarded as involving an unlawful distribution but even there, it is difficult to see how that represents any real unfairness when it is only Türk Altin that would be entitled to that distribution.

386. Mr Ipek has not identified the source or nature of any alleged equitable considerations in this case. Mr Ipek refers to his rights and interests as the holder of the A share, but those rights are set out in Koza Ltd’s Articles and Mr Ipek does not allege that a broader formal or informal agreement has been reached or that there are any circumstances here that are akin to a quasi-partnership.

387. As regards usurping Mr Ipek’s right to manage the Company, that right is subject to Türk Altin’s right to give directions under Article 4 and the exercise of that right, therefore cannot of itself be considered to be unfair.

388. As regards prejudice to Mr Ipek's right under Article 26 to prevent there being steps towards a winding-up of the Company, I have already explained that resolutions aimed at winding down the Company (but not causing it to be wound up) cannot be regarded as being within the scope of Article 26.
389. As regards causing Mr Ipek to become in breach of fiduciary duty I have already explained why complying with a validly passed special resolution cannot amount to a breach of fiduciary duty.
390. Accordingly, even if the court had not already determined to allow the petition for winding up on the grounds of it being just and equitable to do so I consider that there would be enormous difficulty in seeing how Mr Ipek could possibly succeed in his pleaded case in relation to unfair prejudice.
391. However, having determined to allow the winding up petition it becomes abundantly clear that Mr Ipek's unfair prejudice case has no chance to succeed. There is no prospect of the Special Resolutions causing (or having caused) any prejudice to Mr Ipek, unfair or otherwise once the court has determined to wind up the Company. At this point he has no entitlement beyond his right to receive £1 on a solvent winding up and this right will not be prejudiced by anything that Türk Altin has done.
392. I therefore consider that Mr Ipek's unfair prejudice petition has no reasonable prospect of success: there is no serious issue to be tried and therefore service out must be refused on the grounds that the requirement of CPR 3.67(1)(b) is not met.

20. CONCLUSION

393. In the First SJA Judgment I determined that the conditions for a just and equitable winding up on the grounds of circumstances that included loss of trust in a director coupled with an inability to dismiss that director were worthy of the name of deadlock. In my view the equitable considerations that pointed towards a just and equitable winding-up in *Yenidje Tobacco* also applied here, except to the extent that the resulting insupportable position for Türk Altin as the 100% ordinary shareholder could be mitigated by means of a resolution under Article 4.
394. It is now abundantly clear that Mr Ipek will continue to resist any resolution under Article 4 that could provide a resolution to this insupportable position. It follows that absent any other remedy being available to Türk Altin that Türk Altin was unreasonably failing to pursue, I should grant the Petition.
395. Mr Ipek had made offers personally, which he had originally presented as possible alternative remedies but I found in the First SJA Judgment that Türk Altin was not being unreasonable in refusing to engage with those offers, and Mr Ipek has not pressed that point in relation to the Second SJ Application.
396. He has procured new offers from third parties including the Tamarack Offers and the ETS Offers, and argues that Türk Altin is being unreasonable in refusing to pursue these offers. I disagree. Türk Altin has put forward a multitude of cogent reasons why it would not wish to engage with these offers and it is impossible to say that it is unreasonable in taking this position.

397. Of course I must pay full regard to the principles relevant to summary judgment as summarised in Section 4 of this Judgment, but this seems to me a clear case where I can give summary judgment. In my view, even taking Mr Ipek's case at its highest, it is clear that he has no more than a fanciful prospect of success in resisting the Petition.
398. Mr Sheehan makes the point that I still have a discretion whether to give summary judgment, and that I should consider whether I have all the facts necessary in order to exercise that discretion fairly. I consider that I do.
399. Accordingly, I will now give summary judgment in favour of the Petition.
400. My having determined to grant the Petition, Türk Altin does not ask me to give judgment in its favour in relation to its Part 8 claim to establish the validity of the Special Resolutions, and accordingly I will not do so. The Part 8 claim is therefore left in abeyance: neither determined nor dismissed. I have, however, provided an analysis to which another court may refer should the Part 8 claim ever need to be resurrected.
401. On the basis of Mr Ipek's pleaded case, I see no real prospect of his unfair prejudice petition succeeding. His case depends on the Special Resolutions unfairly prejudicing his position as a shareholder, but he has not been able to point to anything that causes any prejudice that he might suffer as being unfair, as opposed to the legitimate use by Türk Altin of its right to vote its shares in its own best interests as it perceives them to be. Further, in the circumstances that a just and equitable winding-up has been ordered, it is impossible to see what prejudice he has suffered. Given the circumstances, Mr Ipek's petition for relief in relation to unfair prejudice has no reasonable prospect of success. There is no serious issue to be tried and I must therefore refuse permission for Mr Ipek to serve his petition out of the jurisdiction.
402. I will ask the parties to agree a draft order reflecting the decisions in this judgment and to provide dates for a short hearing to deal with any consequential matters (including costs) arising from it.